SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 368

JOSEPH P. MARCELLE, PETITIONER,

vs.

ESTATE OF RAYMOND LUPIA, BRUNO LUPIA AND AMELIA LUPIA, EXECUTORS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Original	Print
Proceedings in United States Court of Appeals for the Second Circuit	1	1
Statement under Rule 15 (b)	1	1
Record from U. S. D. C. for the Eastern District of New York	2	1
Complaint	2	1
Exhibit A—Pages 1 & 5—Partnership Return of Income (Form 1065) for calendar year 1944	7	4
Exhibits B & C (omitted in printing)	19	
Defendant's Notice of motion for an order dismissing the complaint	32	5
Opinion, Kennedy, J., on motion to dismiss	34	5
Order denying motion to dismiss	36	6
Defendant's answer	37	7
Plaintiffs' motion for summary judgment	38	7
Affidavit of Bruno Lupia	39	8
Exhibit—Report of Internal Revenue Agent dated September 14, 1951 (omitted in printing)	43	
Opinion, Byers, J., on motion for summary judgment	54	9
Order granting plaintiffs summary judgment	60	12
Notice of appeal	62	14

	Original	Print
Record from U. S. D. C. for the Eastern District of New York—Continued		
Designation of and stipulation as to record (omitted in printing)	63	
Clerk's certificate (omitted in printing)	66	
Opinion, Harlan, J.	67	15
Judgment	74	19
Clerk's certificate (omitted in printing)	76	
Order granting certiorari	77	19

1 In United States Court of Appeals for the Second Circuit

ESTATE OF RAYMOND LUPIA, BRUNO LUPIA AND AMELIA LUPIA, EXECUTORS, PLAINTIFFS-APPELLEES,

against

JOSEPH P. MARCELLE, DEFENDANT-APPELLANT.

STATEMENT UNDER RULE 15(b)

The suit was commenced March 13, 1952. It is an action to recover income taxes paid by the plaintiffs for the year 1945.

The defendant's answer was filed September 26, 1952.

On October 4, 1952, the plaintiffs moved for summary judgment. The motion was granted by the Hon. Mortimer W. Byers, District Judge, in an opinion dated January 2, 1953.

On January 27, 1953, an order was entered granting summary judgment in favor of the plaintiffs.

Notice of Appeal was filed March 5, 1953.

Leon London, Esq., 271 Madison Avenue, New York, N. Y., appears for the plaintiffs.

Frank J. Parker, United States Attorney for the Eastern District of New York, 271 Washington Street, Brooklyn, New York, appears for the defendant.

2 In United States District Court, Eastern District of New York

[Title omitted]

COMPLAINT—March 13, 1952

Plaintiffs, complaining of the defendant, allege:

1. That at all the times hereinafter mentioned Bruno Lupia and Amelia Lupia were the duly appointed executors of the Estate of Raymond Lupia, Deceased.

2. The aforementioned executors are, and at all the times hereinafter mentioned, were citizens of the United States and of the State of New York, and now reside at 145-35 Bayside Avenue, Flushing, Queens County, City and State of New York.

3. Defendant was at all times hereinafter mentioned Collector of Internal Revenue for the First District of New York.

4. The action arises under the Internal Revenue Laws of the United States relating to income taxes and under Section
3 1340 of the Judicial Code and Judiciary of the United States (28 U. S. C. A., Section 1340).

5. That heretofore and on or about December 1, 1942, Metro Coat & Suit Company, a limited partnership, was duly formed

under the Partnership Laws of the State of New York by Bruno Lupia, Sol Beck, William Cornet and Joseph Lupia, as general partners, and Amelia Lupia, Raymond Lupia, Olga Lupia and Albert Lupia, as limited partners, to engage in the manufacture of women's coats and suits. The term of the aforesaid partnership was from December 1, 1942 to January 31, 1944.

6. That articles of limited partnership were executed in accordance with the Partnership Law of the State of New York and all other formalities requisite to the formation of a limited partnership, including publication of notice thereof, were properly and duly completed.

7. That on or about July 1, 1943, the partnership agreement was amended so that Raymond Lupia, a special partner, became a general partner, Joseph Lupia, a general partner, became a limited partner and Domenico Pannissidi, Mima Pannissidi, Florence Cornet and Delores Beck became limited partners and the term of the partnership was extended to January 31, 1947.

8. That thereafter on January 7, 1945, Raymond Lupia was killed in action on Leyte Island, Philippine Islands while a member of the armed forces of the United States and under the provisions of his last will and testament his father, Bruno Lupia, and his mother, Amelia Lupia, were named as executors of his estate, and duly qualified as such executors.

4 9. That said Metro Coat & Suit Co., as such limited partnership, was required to and did file its income tax return for the fiscal year ending June 30, 1945, with the U. S. Collector of Internal Revenue for the Third District on Treasury Department form #1065. Said income tax return, a copy of which is annexed hereto and made a part hereof as Exhibit A, indicated the following as the share of income credited to Raymond Lupia (deceased) and the share credited to the Estate of Raymond Lupia for the fiscal year ending June 30, 1945,

Raymond Lupia (deceased)	$7,916.61
Estate of Raymond Lupia	8,184.05

10. That the aforesaid income in the amount of $7916.68 credited to Raymond Lupia, deceased, was wholly exempt from income taxation under the Internal Revenue Laws of the United States in effect at that time.

11. That no tax was paid on behalf of the decedent on said income of $7916.68 credited to Raymond Lupia, deceased.

12. That the aforesaid income in the amount of $8184.05 credited to the Estate of Raymond Lupia in the taxable year in which fell the date of decedent's death, was wholly exempt from income taxation under the Internal Revenue Laws of the United States in effect at that time.

13. That on or before the 15th day of March, 1946, plaintiffs filed an income tax return for the calender year 1945 with the United States Collector of Internal Revenue for the First District of New York on Treasury Department form 1041, and said return, hereto annexed as Exhibit B, sets forth the share of income for the calendar year 1945 from Metro Coat & Suit Company at $8184.05.

14. That on or before the 15th day of March 1946, plaintiff erroneously paid to the defendant, as United States Collector of Internal Revenue for the First District of New York, $2,039.52, that amount purportedly representing the tax on $8184.05 of the income of said Raymond Lupia, reported for the calender year 1945, as aforesaid.

15. That thereafter and on or about the 11th day of December 1946, a claim for refund was duly filed with the U. S. Collector of Internal Revenue for the First District of New York on Treasury Department form 843 and such claim, a copy of which is hereto annexed as Exhibit C, sets forth therein the claim of the plaintiffs for refund of the taxes erroneously paid for the calendar year 1945.

16. The plaintiff was not required to pay the aforementioned tax in the amount of $2039.52, or any part thereof, under the Internal Revenue Laws of the United States in effect at that time; the income upon which said tax was paid, was wholly exempt, and not subject to income taxation.

17. That plaintiff erroneously paid said $2039.72, and defendant illegally and erroneously retained and still retains said amount.

18. That no part of said tax, erroneously paid as aforesaid, has been repaid to plaintiff although a claim for refund of said $2039.72 has been duly filed as aforesaid.

19. That more than six months have elapsed since the filing of said claim and the Commissioner of Internal Revenue has failed to act thereon.

WHEREFORE plaintiff demands judgment against the defendant for $2039.72 with interest thereon from the date of payment, the same being the amount illegally and erroneously collected by the defendant from the plaintiff, together with the costs and disbursements of this action.

LEON LONDON,
Attorney for Complainants,
Office & P. O. Address,
271 Madison Avenue,
New York 16, New York.

(Duly verified March 6, 1952.)

(Here follow 2-photostats, folios 7-9, 10-31)

EXHIBIT A TO COMPLAINT

UNITED STATES

FORM 1065
Treasury Department
Internal Revenue Service

PARTNERSHIP RETURN OF INCOME

1944

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1944
or fiscal year beginning July 1, 1944, and ending June 30, 1945

(File this return with the Collector of Internal Revenue not later than the 15th day of the 3d month following the close of the taxable year)

OFFICE COPY

(PRINT PLAINLY NAME AND BUSINESS ADDRESS OF THE ORGANIZATION)

Metro Coat & Suit Company
(Name)

500-7th Avenue
(Street and number)

New York, New York
(City or town, state and number) (State)

Business or Profession

GROSS INCOME

1. Gross receipts from business or profession			$ 1965[illegible]	68
2. Less cost of goods sold:				
(a) Inventory at beginning of year	90,793	70		
(b) Merchandise bought for sale	1[illegible]69,447	46		
(c) Cost of labor, supplies, etc.	433,375	73		
(d) Total of lines (a), (b), and (c)	1[illegible]93,616	89		
(e) Less inventory at end of year	68,550	72	1726084	80
3. Gross profit (or loss) from business or profession (item 1 less item 2)			$ 979280	88
4. Income (or loss) from other partnerships, syndicates, pools, etc. (Show separately name, address and amount)				
5. Interest on bank deposits, notes, corporation bonds, etc. (except interest to be reported in item 6)				
6. Interest on tax-free covenant bonds upon which a Federal tax was paid at source				
7. Interest on Government obligations, etc.:				
(a) From Schedule A, line (f)				
(b) From Schedule A, line (j)				
8. Rents				
9. Royalties				
10. Net gain (or loss) from sale or exchange of property other than capital assets (Show Schedule B)				
11. Dividends				
12. Other income (State nature of income) Sundry Income			1576	49
13. Total income in items 3 to 12			$ 980756	97

DEDUCTIONS

14. Salaries and wages (Do not include compensation for partners)	$ 66646	60
15. Rent	26080	00
16. Repairs		
17. Interest on indebtedness (explain on Schedule F)	22795	98
18. Taxes (explain on Schedule C)		
19. Losses by fire, storms, shipwreck, or other casualty, or theft (attach schedule)		
20. Bad debts (explain on Schedule D)	2590	32
21. Depreciation (explain on Schedule E)		
22. Amortization of emergency facilities (attach statement)		
23. Depletion of mines, oil and gas wells, timber, etc. (attach schedule)	69512	65
24. Other deductions authorized by law (explain on Schedule F)	[illegible]	[illegible]
25. Total deductions in items 14 to 24	$ [illegible]	[illegible]
26. Ordinary net income (item 13 less item 25)	$	
27. Net short-term capital gain (or loss) (from Schedule C Summary, line 1, column G)	$	
28. Net long-term capital gain		

7=9

EXHIBIT A, PAGE 5

METRO COAT & SUIT COMPANY

PARTNERS' SHARES OF INCOME & CREDIT.-JUNE 30, 1945

	NET [illegible]	PARTNERS' SHARES	ORDINARY NET [illegible]	[illegible]
Bruno Lupia 145-35 Bayside Ave., Flushing, L.I.	44,101.80	6,760.00	50,861.80	466.59
Amelia Lupia 145-35 Bayside Ave., Flushing, L.I.	44,101.80	-	44,101.80	466.59
Olga Lupia 145-35 Bayside Ave., Flushing, L.I.	14,700.60	1,820.00	16,520.60	155.53
Raymond Lupia (Deceased) 145-35 Bayside Ave., Flushing, L.I.	7,916.61	-	7,916.61	-
Estate of Raymond Lupia 145-35 Bayside Ave., Flushing, L.I.	8,184.05	-	8,184.05	170.34
Albert Lupia 145-35 Bayside Ave., Flushing, L.I.	14,700.60	-	14,700.60	155.53
Trust of Bruno Lupia, Jr. c/o Sean Condon, Trustee 271 Madison Ave., N.Y.C.	14,700.60	-	14,700.60	155.53
Bruno Lupia, Jr. 145-35 Bayside Ave., Flushing, L.I.	-	780.00	780.00	-
Dominick Manisidi 141-30 85th Rd., Jamaica, L.I.	14,000.58	3,380.00	17,380.58	146.19
Alma Manisidi 141-30 85th Rd. Jamaica, L.I.	11,200.46	-	11,200.46	116.36
Saul Book 172 West 79th Street, N.Y.C.	30,801.25	6,760.00	37,561.25	325.88
Dolores Book 172 West 79th St., N.Y.C.	30,801.25	-	30,801.25	325.88
William Cornet 175 West 79th St., N.Y.C.	22,400.92	6,760.00	29,160.92	237.00
Florence Cornet 175 West 79th St., N.Y.C.	22,400.92	-	22,400.92	237.00
	280,011.44	26,260.00	306271.44	2,962.50

individual who dies after December 7, 1941, while in active
35 service as a member of the military or naval forces of the United States the tax imposed "by this chapter" shall not apply with respect to "the taxable year in which falls the date of his death". The government takes the position that only the individual is exempt—that his estate remains liable. The complaint which is now attacked by a motion to dismiss is framed on the theory that any tax, whether against the individual or the estate, is abated so long as it covers the taxable year in which falls the date of decedent's death.

The government concedes that there is at least one authority (*Bickerstaff* v. *Allen*, M. D. Ga., 1952, 102 F. Supp. 840) which squarely supports plaintiff's contention. A very narrow question of statutory construction is involved.

As I see it, that question is whether the language of the statute abating taxes for "the taxable year in which falls the date of death" is to be given its normal natural meaning, or whether by unwarranted emphasis upon the word "individual" it is possible to take away with one hand what has been given with the other. The purpose of the enactment, it is clear, was to relieve those dying in the service against the burden of tax for the year in which they died. It would be quite anomalous, no matter what speeches may have been made while the legislation was being framed, to say that this bounty should be withheld so far as the "estate" of the deceased veteran is concerned. I am in complete agreement with what Judge Hoyt says in the *Bickerstaff* case.

The motion is, therefore, denied.

HAROLD M. KENNEDY,
United States District Judge.

36 In United States District Court

ORDER DENYING MOTION TO DISMISS—September 19, 1952.

Defendant having moved to dismiss the complaint herein for insufficiency, and good cause appearing, it is

ORDERED that said motion be denied.

HAROLD M. KENNEDY,
United States District Judge.

37 In United States District Court

(Title omitted)

DEFENDANT'S ANSWER—Filed September 26, 1952

Joseph P. Marcelle, the defendant above-named, by Frank J. Parker, United States Attorney for the Eastern District of New York, for his answer to the complaint herewith respectfully alleges and shows:

1. That he admits each and every allegation as to Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13 and 19.

2. That he denies each and every allegation contained in Paragraphs 10, 12, 14, 16, 17 and 18, and every allegation in Paragraph 15 of the complaint except he admits that on or about the 11th day of December 1946 a claim for refund was filed with the Collector of Internal Revenue, a copy of which is attached to the complaint, marked Exhibit C.

WHEREFORE, defendant demands judgment against the plaintiff dismissing the action, with costs.

FRANK J. PARKER,
United States Attorney,
Attorney for Defendant.

38 In United States District Court

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—October 4, 1952

SIR:

PLEASE TAKE NOTICE that the undersigned will move this court at a term for motions to be held at the United States Courthouse, No. 271 Washington Street, Brooklyn, New York, on the 29th day of October, 1952, at 10 A. M., for an order striking out the answer herein, and granting summary judgment to the plaintiffs herein, upon the ground that there is no genuine issue as to any material fact, and plaintiffs are entitled to a judgment as matter of law.

Yours, etc.,

LEON LONDON,
Attorney for Plaintiffs.

Dated: New York,
October 4, 1952.

To:

FRANK J. PARKER, ESQ.,
United States Attorney,
Eastern District of New York,
Attorney for Defendant.

39 AFFIDAVIT OF BRUNO LUPIA

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss*:

BRUNO LUPIA, being duly sworn, deposes and says:

I am one of the plaintiffs herein and the father of the deceased Raymond Lupia. I make this affidavit in support of plaintiff's motion for summary judgment.

This is an action to recover $2039.52 in income taxes paid by plaintiffs for the year 1945. It is believed that the defendant will concede the facts which are a matter of documentary evidence in the possession of the defendant.

Plaintiff's testator, United States Army Technical Sergeant Raymond Lupia, #32295014, was killed in action on Leyte Island, Philippine Islands on January 7, 1945. He was a calendar year taxpayer. At the time of his death he was a general partner of Metro Coat & Suit Co., a limited partnership whose tax year ran from July 1, 1944 to June 30, 1945.

40 The tax return of the partnership for the period July 1, 1944 to June 30, 1945, which is annexed to the complaint shows the decedent's share of the partnership income to be $16,000.66 of which $8,184.15 was for the period January 7th to June 30, 1945. The plaintiffs on March 15, 1946 filed a tax return covering the period from January 7, 1945, the date of decedent's death, to December 31, 1945, showing income of $8,184.05 from the partnership, upon which the tax of $2,039.52 was paid.

This suit was brought under Internal Revenue Code Sec. 421, which was added by Section 8 of the Current Tax Payment Act of 1943 (C. 120, 57 Stat. 126) and was amended by the Act of August 5, 1947 (C. 496 62 Stat. 778). The court will note that the latter amendment took place after the date of the decedent's death and of the tax return. As thus amended, Section 1 reads as follows:

"In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—

"(a) the tax imposed by this chapter shall not apply with respect to any prior taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces; and

"(b) the tax under this chapter and under the corresponding title of each prior revenue law for taxable years preceding those

specified in clause (a) which is unpaid at the date of his death
(including interest, additions to the tax, and additional
41-53 amounts) shall not be assessed, and if assessed the assess-
ment shall be abated, and if collected, shall be credited
or refunded as an overpayment."

The claim for refund was filed on December 11, 1946. The application for refund was disallowed on September 14, 1951, as appears from the report of the Internal Revenue Agent in charge dated September 14, 1951, a copy of which is hereto annexed. This action was commenced on March 13, 1952.

As appears from the marked pleadings which will be handed up on the argument, the defendant admits all of the factual allegations of the complaint, but denies their legal effect.

However, the issues of law herein were all resolved in plaintiff's favor by Judge Kennedy on defendant's motion to dismiss the complaint for insufficiency. A copy of Judge Kennedy's opinion denying defendant's motion to dismiss for insufficiency is hereto annexed. It constitutes the law of the case and the motion for summary judgment must be granted.

I am advised by my attorney and verily believe that there are no issues of fact herein and that the law of the case has been settled by Judge Kennedy's decision.

Wherefore I respectfully ask that this motion be granted and that summary judgment be granted in plaintiff's favor, with costs, for all of which no previous application has been made.

(S.) BRUNO LUPIA.

(Sworn to October 8, 1952.)

(Judge Kennedy's opinion appears supra)

54 In United States District Court

(Title omitted)

LEON LONDON, Esq., *Attorney for the Plaintiffs.*
FRANK J. PARKER, Esq., *United States Attorney*
Eastern District of New York, Attorney for
Defendant,
By: FREDERIC G. RITA, Esq., *Special Assistant to the*
Attorney General.

OPINION—January 2, 1953

BYERS, *District Judge*:

This is a plaintiff's motion to strike the answer and for summary judgment according to the prayer of the complaint in an action to recover payment of federal income tax. It was argued on October 29, and decision was deferred at the suggestion of both sides, pending the outcome of an appeal then pending in the Fifth Circuit,
in the case of *Bickerstaff* v. *Allen*, reported in 102 Fed. Supp.
55 840.

That appeal was decided November 29, 1952 and a copy of the opinion reversing the decision of the District Court was filed with the undersigned on December 8, 1952.

The question of law there involved is identical with the one here, and the facts are so closely parallel as to preclude differentiation.

The issue was presented to former Judge Kennedy of this Court on September 3, 1952 in a defendant's motion to dismiss, which was denied by him eight days thereafter (*Lupia's Estate* v. *Marcelle*, 107 Fed. Supp. 552).

His opinion followed the *Bickerstaff* ruling below, and concluded with the observation: "I am in complete agreement with what Judge Hoyt (Chief Judge T. Hoyt Davis) says in the *Bickerstaff* case."

The instant facts are not in dispute:

Raymond Lupia, the decedent above named, a United States Army Technical Sergeant, was killed in action on January 7, 1945.

Lupia filed his income tax returns on a calendar year basis. At the time of his death he was a general partner of Metro Coat & Suit Co., a limited partnership, whose tax year ran from July 1, 1944 to June 30, 1945.

The tax return for the partnership for the fiscal year ended June 30, 1945 shows Lupia's share of the income to be $8,184.05 for the period from January 7, 1945 (the date of Lupia's death) to June 30, 1945.

The plaintiffs filed a "Fiduciary Income Tax Return" for the calendar year reporting that amount, upon which a tax of $2,039.52 was paid.

Plaintiffs now seek a refund of that payment since the income of a soldier is exempt from income taxes for the entire year in
56 which his death occurred, according to 57 Stat. 149, 61 Stat. 778, former Section 421 of the Internal Revenue Code (26 U. S. C. § 421), which reads:

> "Abatement of Tax for Members of Armed Forces Upon Death.
>
> "In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military

or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—

"(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces; * * *"

In the absence of controlling authority in this Circuit, the present task is deemed to require decision of this case anew, as though there had been no earlier ruling, although the plaintiffs urge that within these pleadings, the law has been settled. If that view were to prevail, despite the course of decision elsewhere, this Court could disclaim any responsibility for the further course of this litigation, which, however convenient, would be scarcely circumspect.

The latest opinion in the *Bickerstaff* case has been studied with care, and no lack of deference is intended by the statement that it does not seem to meet or even discuss the point made in the opinion of Judge Davis in the following language (102 Fed. Supp. 840, at 842):

"Since the serviceman must be deceased before the benefits accrue, his estate could be the only intended beneficiary of the forgiveness feature of the Section."

57 That is the heart of the matter, as Congress was doubtless aware, and is not to be avoided by reference to the estate as a "taxable entity other than the individual serviceman."

It is too clear for argument that Congress intended to stay the hand of the tax gatherer in favor of one who should have paid "the last full measure of devotion" to that Government whose fiscal agent is proverbially inexorable, "with respect to the taxable year in which falls the date of his death." The taxable year was 1945, as has been stated, and since, as Judge Davis observes, the only ones who could possibly derive benefit from the benign aim of the statute would be his beneficiaries, it follows that the purpose should be given effect unless violence thereby would be done to the symmetry of the Revenue Law. No such dire consequence would ensue, as I shall try to show:

The concept of a separate taxable entity known as an estate is a convenience for the administration of the taxing statute. Strictly speaking, there is no such legal entity having existence exterior to this statute, although the Revenue Law speaks as though there were. Thus Mr. Justice Stone in *Hartley* v. *Commissioner*, 295 U. S. 216 at 218:

"The revenue acts consistently treat the estate of a decedent in the hands of an administrator or executor as a separate

taxpayer. By § 2 of the 1921, 1924 and 1926 Acts the estate of a decedent is embraced within the term 'taxpayer.' Each Act specifically provides for taxation of the income of an estate during administration."

So also reads the present statute.

58 It is one thing for the Revenue Law to provide for its own successful administration by the employment of convenient terms and expressions and even artificial concepts, but it does not follow that fundamental principles of law are thereby altered. When a man dies his property, other than real estate, vests in his personal representatives for the purposes of administration and distribution; it is necessary to levy an income tax upon them until that process shall have been completed, but no displacement or repeal of the unrelated principles of general law touching the devolution of property is thereby accomplished.

To call executors or administrators an estate, for purposes of the levy and collection of income tax from them, does not add to nor detract from their true legal status; it may be convenient to label that status for such purposes a taxable entity, but no new jural personality emerges from the process; to reason otherwise is to impart to a convenient medium for the assessment and collection of an income tax an essential quality not requisite to accomplish the obvious purpose, and not within the competency of a taxing statute to create.

In other words, there is no inconsistency involved in giving effect to the provision first above quoted as a mitigation of and supplement to Sec. 161 of the Revenue Code which in (a) (3) provides that the federal income tax applies to "Income received by estates of deceased persons during the period of administration or settlement of the estate." In view of the obvious impossibility of accomplishing the immunity thus proclaimed from income tax in these exceptional circumstances—"with respect to the taxable year in which falls the date of his death"—otherwise than by favoring

59 the beneficiaries of a decedent whose death in active service gives rise to the forgiveness from one year's income tax, a construction compatible with that result becomes inevitable.

This construction is thought to give harmonious effect to the manifest purpose of Congress in all related aspects of the law. Thus the plaintiff's motion to strike the answer, and for summary judgment in their favor, must be granted.

Settle order.

M. W. B.
U. S. D. J.

60 In United States District Court

ORDER GRANTING PLAINTIFFS SUMMARY JUDGMENT—January 27, 1953

At Brooklyn, New York, in said district, on the 27th day of January, 1953.

The plaintiffs having moved for summary judgment and the said motion having regularly come on to be heard,

Now, upon reading and filing the notice of motion dated October 4, 1952, the affidavit of Bruno Lupia, duly sworn to October 8, 1952, and the exhibits thereto annexed, and after hearing Leon London, attorney for the plaintiff in support of said motion and Frank J. Parker, United States Attorney, Attorney for the Defendant, by Frederic G. Rita, Special Assistant to the Attorney General, in opposition to the motion, and due consideration having been had thereon and the Court having rendered its decision dated January 2, 1953, it is, in accordance therewith

ORDERED, that the motion be, and the same is hereby in all respects granted; and it is further

ORDERED, that the answer interposed herein by the defendant, be stricken out, and it is further

ORDERED that the plaintiff have and recover judgment against the defendant in the sum of $2,039.72, with interest thereon
61 from March 15, 1946 to January 27, 1953, amounting to $840.33, amounting in all to $2,880.05 and the Clerk of this Court is hereby directed to enter judgment in favor of the plaintiff and against the defendant for said sum of $2,880.05.

MORTIMER W. BYERS,
United States District Judge.

62-65 In United States District Court

(Title omitted.)

NOTICE OF APPEAL—March 5, 1953

Please take notice that Joseph P. Marselle, the defendant above-named, hereby appeals to the United States Court of Appeals for the Second Judicial Circuit from the final order and judgment entered herein on January 27, 1953, in favor of the plaintiffs and against the defendant and from each and every part and from the whole thereof.

Dated: Brooklyn, New York,
March 5, 1953.

FRANK J. PARKER,
United States Attorney,
Attorney for Defendant.

To:

LEON LONDON, Esquire,
Attorney for Plaintiffs.
CLERK OF THE UNITED STATES DISTRICT COURT,
for the Eastern District of New York,
United States Court House,
Brooklyn, New York.

66 Clerk's Certificate to foregoing transcript omitted in printing.

67 In United States Court of Appeals for the Second Circuit—

October Term, 1953

No. 19

(Argued May 13, 1954 Decided July 2, 1954.)

Docket No. 22731

ESTATE OF RAYMOND LUPIA, BRUNO LUPIA and AMELIA LUPIA, EXECUTORS, *Plaintiffs-Appellees,*

v.

JOSEPH P. MARCELLE, *Defendant-Appellant.*

Before: CHASE, Chief Judge, HINCKS and HARLAN, Circuit Judges.

Appeal from an order of the United States District Court for the Eastern District of New York, Mortimer W. Byers, Judge,

granting a motion for summary judgment in favor of plaintiffs in an action for refund of an alleged overpayment in estate federal income taxes. 109 F. Supp. 6 (1953). Affirmed.

68 Leon London, New York City, for plaintiffs-appellees.

Walter Akerman, Jr., Special Assistant to the Attorney General (H. Brian Holland, Assistant Attorney General, Ellis N. Slack, Special Assistant to the Attorney General, and Frank J. Parker, United States Attorney, on the brief), for defendant-appellant.

OPINION

HARLAN, *Circuit Judge*:

This appeal concerns the scope of the relief from income taxation given to individuals who died while serving with our Armed Forces, under former § 421 of the Internal Revenue Code, as amended by the Act of August 5, 1947. 61 Stat. 778, C. 496, 26 U. S. C. A., Cum. Supp. § 421. That Section, the full text of which is printed in the margin,[1] among other things forgives the income taxes of any "individual" who died on or after December 7, 1941 and prior to January 1, 1948, while serving in the Armed Forces of the United States or those of any of the other United Nations, "with respect

69 to the taxable year in which falls the date of his death."

Raymond B. Lupia was killed in action at Leyte, P. I., on January 7, 1945, while serving as a Sergeant in the United States Army. He had filed his income tax returns on a calendar year basis. At the time of his death, Lupia was a member of a partnership which filed its income tax returns on the basis of a fiscal year ending June 30. Upon Lupia's death, the partnership credited to him $7,916.61, being his share of the partnership income to the date of

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[1] "SEC. 421. ABATEMENT OF TAX FOR MEMBERS OF ARMED FORCES UPON DEATH.

"In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—

"(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces; and

"(b) the tax under this chapter and under the corresponding title of each prior revenue law for taxable years preceding those specified in clause (a) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment."

his death, and to his estate $8,184.05, being his share of the income for the period January 7 to June 30, 1945. No income tax was paid, and none is claimed on the first sum. Lupia's executors reported the $8,184.05 in a timely estate income tax return, and paid a tax thereon of $2,039.52, which they subsequently sought to recover in a refund suit against the Collector. The District Court granted summary judgment in favor of the estate, from which the Collector appeals.

For the Collector, it is contended that § 421 limits the forgiveness of income taxes to those payable for the period up to the date of the serviceman's death. Lupia's executors contend that the Statute forgives income taxes for the *full* taxable year in which death occurred.

The question has been the subject of conflicting decisions. Prior to the decision below, the taxpayer's position was upheld by former Judge Kennedy on a motion to dismiss the complaint in this action. *Lupia's Estate* v. *Marcelle*, 107 F. Supp. 552 (E. D. N. Y. 1952). The Court of Appeals for the Fifth Circuit, which Judge Byers declined to follow in the present case, has gone the other way. *Allen* v. *Bickerstaff*, 200 F. 2d 181 (5th Cir. 1952).

The position of the Collector rests largely upon a technical reading of the Statute. His argument is that since a decedent and his estate are separate taxable entities, and since § 421 applies
70 only "in the case of any *individual*,"[2] the taxes forgiven are only those which relate to the period up to the date of the serviceman's death.

We think such a reading of the Statute too narrow and that it does violence to the ordinary meaning of the language used. The Statute forgives "the tax imposed * * * with respect to *the* taxable year *in which falls* the date of his death." To us this means the tax for the *full* taxable year in which death occurs. The Collector would have us interpret this provision as if it read "the tax imposed with respect to *that portion* of the taxable year *ending* with the date of his death." If we are to be technical, it seems reasonable to suppose that language of that import would have been used had the Congressional intent been the limited one which the Collector suggests. To overcome this difficulty, the Collector relies upon § 48(a), I. R. C., 26 U. S. C. A. § 48(a), which states that in the case of a return made for a fractional part of a year, "taxable year" as used in Chapter 1 means the period for which such return is made. This definition might conceivably have some application had Congress in § 421, limited relief to the deceased serviceman's "last taxable year." But the use of the phrase "taxable year in which falls the

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date of his death" contemplates, we think, the existence of a period which may extend beyond the serviceman's death, *i.e.*, his normal taxable year.

In our view, the phrase "In the case of any individual" was simply intended to refer to the category of those members of the Armed Forces embraced within the forgiveness provisions—that is those losing their lives in service on or after Pearl Harbor day and before January 1, 1948—and was not intended to draw a distinction between the income taxes of such an individual and those of
71 his estate with respect to the taxable year in which death occurred.

Our interpretation of § 421 seems to be in accord with Congressional pronouncements as to the purpose of the Statute. In the report of the House Committee on Ways and Means on the 1947 Amendment, it was stated that "no income tax is imposed for the taxable year in which" a member of the Armed Forces dies. H. Rep. No. 1006, 80th Cong., 1st Sess., pp. 1-2; U. S. Code Cong. & Admin. Serv., p. 1612. Likewise when § 154 of the present Internal Revenue Code (26 U. S. C. A. § 154) was passed in 1951 to extend the § 421 tax relief to service personnel losing their lives in the Korean War, the Senate Report stated that under § 421 members of the Armed Forces "were forgiven their income tax with respect to the year of the death * * *" and described one of the purposes of the new legislation as being "the forgiving of income tax in the year of death of such individuals * * *" S. Rep. No. 781, 82d Cong., 1st Sess.; U. S. Code Cong. & Admin. Serv., p. 2023. Moreover, the Treasury Regulation which deals with § 421 also appears to construe the statute as we do when it states: "the tax liability in the case of such individual * * * for the taxable year *in which* occurs the date of death is cancelled * * *" T. R. 111, § 29.421-1, 1948-2 Cum. Bull. 14, 24.

The Collector's narrow construction of § 421 also appears to be gainsaid by the broad sweep of its other provisions, as originally enacted and subsequently expanded. As originally passed, § 421 forgave not only those income taxes imposed for the taxable year in which death occurred, but also those due for any prior year which were *unpaid* at the time of death, even though such unpaid taxes related to a taxable year ending prior to December 7, 1941, or to a year when the deceased serviceman was not a member of the Armed Forces. And if such unpaid taxes were later collected,
72 they were refundable. The 1947 amendment enlarged this relief by relieving such a deceased individual from, and making refundable, *all* income taxes paid for any taxable year ending on or after December 7, 1941 "during *any part of which*" the deceased was in the Armed Forces. And § 345 of the Revenue Act of 1951, 65 Stat. 517, C. 521, 26 U. S. C. A., Cum. Supp. § 345,

enacted after the decision in *Lloyd* v. *Delaney*, 181 F. 2d 941 (1st Cir. 1950) holding § 421 inapplicable to undistributed trust income, still further extended the scope of income tax relief accorded deceased servicemen so as to embrace, within certain limits, trusts for their benefit in respect of income accumulated at their death which was payable to their estates or lineal next of kin.

Thus, the march of this remedial legislation has ever been forward. One way of putting the Collector's position here is that it attributes to § 421 a purpose to equate the scope of the tax forgiveness with the end of a soldier's service during the taxable year in which he died. But since § 421 clearly does not equate the *beginning* date of forgiveness with commencement of a deceased soldier's service, it seems unlikely that such an equation was intended with respect to its *ending* date by death. So far as the supposed distinction between individual and estate income taxes is concerned, it is clear that the refunding provisions of § 421 can only enure to the benefit of the serviceman's estate. And it is difficult to reconcile the purpose of the 1947 amendment of § 421, *i.e.*, to put deceased servicemen who had paid their income taxes for previous taxable years ending after December 7, 1941 on the same basis with those who had not paid their taxes for such years (see Report of House Committee on Ways and Means, *supra*), with a construction which would make the extent of the tax relief for the taxable year in which death occurred depend upon the circumstance of when
73 the serviceman happened to die.

We do not consider *Lloyd* v. *Delaney*, *supra*, at all apposite. As Judge Wyzanski noted in his opinion in the District Court, there is a great difference between a construction of the Statute which would apply it to undistributed *trust* income, and one which "accords with its purpose of giving a benefit to the estate of a deceased serviceman." 86 F. Supp., at p. 1002. Here Lupia's estate seeks exemption from a tax which would have fallen on Lupia himself had he survived. But even if the deceased serviceman in the *Delaney* case had survived, it is clear that he would have incurred no tax liability with respect to the income accumulated in the trust, for which the trust sought exemption.

We are unable to agree with the decision of the Fifth Circuit in *Allen* v. *Bickerstaff*, *supra*, and must respectfully decline to follow it. We hold that § 421 forgives the income taxes of a deceased serviceman, coming within its provisions, for the full taxable year in which death occurred.

Affirmed.

74 In United States Court of Appeals for the Second Circuit

ESTATE OF RAYMOND LUPIA, ET AL., *Plaintiffs-Appellees*,

v.

JOSEPH P. MARCELLE, *Defendant-Appellant*

JUDGMENT—July 2, 1954

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

(S.) A. DANIEL FUSARO,
Clerk.

(File endorsement omitted)

76 Clerk's Certificate to foregoing transcript omitted in printing.

77 Supreme Court of the United States, October Term, 1954

No. 368

(Title omitted)

ORDER ALLOWING CERTIORARI—Filed November 15, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954 325551 781

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute and Regulations involved	2
Statement	2
Reasons for granting the writ	3
Conclusion	5
Appendix A	1a
Appendix B	5a

CITATIONS

Case:	
Allen v. *Bickerstaff*, 200 F. 2d 181	3, 4
Statutes and Regulations:	
Internal Revenue Code of 1939:	
Sec. 154, as added by Sec. 334 of the Revenue Act of 1951, c. 521, 65 Stat. 452 (26 U.S.C. 1952 ed., Sec. 154) and as amended by Sec. 104 of the Technical Changes Act of 1953, c. 512, 67 Stat. 615 (26 U.S.C. 1952 ed., Supp. I, Sec. 154)	4
Sec. 421 (26 U.S.C. 1946 ed., Supp. II, Sec. 421)	2, 3, 4, 1a
Internal Revenue Code of 1954, Sec. 692	4
Treasury Regulations 111, Sec. 29.421-1	2a

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. —

JOSEPH P. MARCELLE, PETITIONER

v.

ESTATE OF RAYMOND LUPIA, BRUNO LUPIA AND AMELIA LUPIA, EXECUTORS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the petitioner, a former Collector of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the District Court (R. 54-59) is reported in 109 F. Supp. 6. The opinion of the Court of Appeals (Appendix B, *infra*, pp. 5a-12a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 2, 1954. (Appendix B, *infra*, p. 13a.) The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Section 421 of the Internal Revenue Code of 1939 provided that "In the case of any individual" who dies while in active service as a member of the armed forces, the income tax "shall not apply with respect to the taxable year in which falls the date of his death". The question presented is whether the statute, in addition to forgiving the income tax liability of the deceased up to the date of his death, also cancels the liability of his estate in respect to income realized by it subsequent to the decedent's death but within the same year.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Internal Revenue Code of 1939 and of Treasury Regulations 111 are set forth in Appendix A, *infra*, pp. 1a-5a.

STATEMENT

The facts in this case, which are undisputed, are substantially as follows:

Technical Sergeant Raymond B. Lupia, the decedent, died on January 7, 1945, while serving as a member of the armed forces of the United States. During his lifetime, he filed his income tax returns on a calendar year basis. He was a member of a business partnership which filed its income tax re-

turns on the basis of a fiscal year ending June 30. (R. 3-4, 39.)

For the fiscal year ended June 30, 1945, the partnership credited to the deceased the sum of $7,916.61 as his share in the partnership income, and credited a share in the amount of $8,184.05 to his estate, the latter amount being for the period January 7 to June 30, 1945. No tax was paid with respect to the income credited to Lupia. However, the estate filed a timely income tax return for the period January 7 to December 31, 1945, reporting the $8,184.05 partnership income credited to it upon which a tax of $2,039.52 was paid. (R. 4-5, 40.)

On December 11, 1946, the estate (here referred to as the taxpayer) filed a claim for refund of the income tax paid by it for 1945 (R. 5) and on March 13, 1952, instituted this suit for refund (R. 1). The District Court entered an order granting the taxpayer summary judgment in the amount sought, with interest (R. 60-61). The Court of Appeals affirmed. (Appendix B, *infra*, p. 13a.)

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is squarely in conflict with the decision of the Court of Appeals for the Fifth Circuit in *Allen* v. *Bickerstaff*, 200 F. 2d 181, in which the identical question was presented on similar facts. The Fifth Circuit interpreted Section 421 of the Internal Revenue Code of 1939 (Appendix A, *infra*, p. 1a) as relating only to the income tax liability of the individual deceased serviceman and as not extending to his estate, a

separate taxable entity, relief from taxes on income realized by it. The court below, on the other hand, held that the statute was intended to forgive not only taxes owing by the serviceman up to the date of his death but also income taxes of the serviceman's estate during the remainder of the serviceman's normal tax year, though attributable to income realized by the estate subsequent to his death. The court below, noting the conflicting decisions upon the question here presented, stated its disagreement with the Fifth Circuit's *Bickerstaff* decision and expressly declined to follow it.

2. The problem of statutory construction raised in this case is a continuing and recurrent one. Section 421 of the Internal Revenue Code of 1939 expired by its own terms on December 31, 1947. However, that section, which applied to servicemen dying between December 7, 1941, and January 1, 1948, was followed by Section 154 of the Internal Revenue Code of 1939, as added by Section 334 of the Revenue Act of 1951, c. 521, 65 Stat. 452 (26 U.S.C. 1952 ed., Sec. 154), which contained similar provisions applicable to members of the armed forces dying while serving in a combat zone in the period June 24, 1950, to January 1, 1954. The latter section was amended by Section 104 of the Technical Changes Act of 1953, c. 512, 67 Stat. 615 (26 U.S.C. 1952 ed., Supp. I, Sec. 154), to extend the expiration date to January 1, 1955. Substantially identical provisions have been embodied in Section 692 of the Internal Revenue Code of 1954, but without any termination date.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

SEPTEMBER, 1954.

APPENDIX A

Internal Revenue Code of 1939:

SEC. 421 [As added by Sec. 8 of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, and as amended by Sec. 1 of the Act of August 5, 1947, c. 496, 61 Stat. 778]. ABATEMENT OF TAX FOR MEMBERS OF ARMED FORCES UPON DEATH.

In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—

(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces; and

(b) the tax under this chapter and under the corresponding title of each prior revenue law for taxable years preceding those specified in clause (a) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(26 U. S. C. 1946 ed., Supp. II, Sec. 421.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

> SEC. 29.421-1 [As added by T. D. 5305, 1943 Cum. Bull. 260, 271, and amended by T. D. 5645, 1948-2 Cum. Bull. 14, 23]. *Abatement of Tax for Members of the Armed Forces on Death.*—If an individual dies on or after December 7, 1941, and before January 1, 1948, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations, then—
>
> (a) the tax liability in the case of such individual under chapter 1 for the taxable year in which occurs the date of death is canceled and if the tax (including interest, additions to the tax, and additional amounts) is assessed, the assessment shall be abated and if the amount of such tax is collected (regardless of the date of collection) the amount so collected shall be credited or refunded as an overpayment;
>
> (b) the tax liability in the case of such individual under chapter 1 for any taxable year (ending on or after December 7, 1941) prior to the year in which occurs the date of death during any part of which he was a member of such forces is canceled and if the tax (including interest, additions to the tax, and additional amounts) is assessed, the assessment shall be abated and if the amount of such tax is collected, the amount so col-

lected shall be credited or refunded as an overpayment and if at any time prior to January 1, 1948, the allowance of a credit or refund of an overpayment of such amount is barred (except for the provisions of section 3801) by the operation of any law or rule of law, a credit or refund of the overpayment of such amount may be allowed or made provided claim therefor is filed before January 1, 1949; and

(c) that amount of tax for taxable years preceding those specified in (a) and (b) above under chapter 1, or corresponding provisions of prior revenue laws, which remains unpaid as at the date of death shall not be assessed, and if any such unpaid tax (including interest, additions to the tax, and additional amounts) has been assessed, such assessment shall be abated and if the amount of any such unpaid tax is collected subsequent to the date of death, the amount so collected shall be credited or refunded as an overpayment.

If such individual and his spouse have for any such year filed a joint return, the tax abated, credited, or refunded pursuant to the provisions of section 421 for such year shall be an amount equal to that portion of the joint tax liability which is the same percentage of such joint tax liability as a tax computed upon the separate income of such individual is of

the sum of the taxes computed upon the separate incomes of such individual and his spouse, but with respect to taxable years during which such individual was at no time a member of the military or naval forces of the United States or any of the other United Nations and with respect to taxable years ending before December 7, 1941, the amount so abated, credited, or refunded shall not exceed the amount unpaid at the date of death. For such purpose the separate tax of each spouse shall be the tax computed under Chapter 1 before the application of sections 32, 35, and 466(e), but after the application of section 31, as if such spouse were required to make a separate return, except that each spouse shall be entitled to one-half of the personal exemption allowed on the joint return.

If an individual whose tax is canceled under section 421 and his spouse filed a joint declaration of estimated tax for the taxable year in which occurs the date of death of such individual, the estimated tax paid pursuant to such declaration may be treated as the estimated tax of either such individual or his spouse, or may be divided between them, according as his legal representative and his spouse may agree. Should they agree to treat the estimated tax paid pursuant to such joint declaration as the estimated tax of such individual, the estimated tax so paid shall be credited or refunded as an overpayment for the taxable year ending with the date of death of such individual.

This section applies only if the death occurs while the individual is in active service. A person is in the active service of the military or naval forces if he is actually serving in such forces, not necessarily in the field or in the theater of war. Personnel in the inactive reserves or on retirement are not in active service. Periods during which a person is absent from duty on account of sickness, wounds, leave, internment by the enemy, or other lawful cause are periods of active service.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 19—October Term, 1953.

(Argued May 13, 1954 Decided July 2, 1954.)

Docket No. 22731

ESTATE OF RAYMOND LUPIA, BRUNO LUPIA AND AMELIA LUPIA, EXECUTORS, PLAINTIFFS-APPELLEES

v.

JOSEPH P. MARCELLE, DEFENDANT-APPELLANT

Before: CHASE, *Chief Judge*, HINCKS and HARLAN, *Circuit Judges*.

Appeal from an order of the United States District Court for the Eastern District of New York,

Mortimer W. Byers, Judge, granting a motion for summary judgment in favor of plaintiffs in an action for refund of an alleged overpayment in estate federal income taxes. 109 F. Supp. 6 (1953). Affirmed.

LEON LONDON, New York City, *for plaintiffs-appellees.*

WALTER AKERMAN, JR., Special Assistant to the Attorney General (H. Brian Holland, Assistant Attorney General, Ellis N. Slack, Special Assistant to the Attorney General, and Frank J. Parker, United States Attorney, on the brief), *for defendant-appellant.*

HARLAN, *Circuit Judge:*

This appeal concerns the scope of the relief from income taxation given to individuals who died while serving with our Armed Forces, under former §421 of the Internal Revenue Code, as amended by the Act of August 5, 1947. 61 Stat. 778, C. 496, 26 U. S. C. A., Cum. Supp. §421. That Section, the full text of which is printed in the margin,[1] among

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[1] "SEC. 421. ABATEMENT OF TAX FOR MEMBERS OF ARMED FORCES UPON DEATH.

"In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—

"(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces; and

other things forgives the income taxes of any "individual" who died on or after December 7, 1941 and prior to January 1, 1948, while serving in the Armed Forces of the United States or those of any of the other United Nations, "with respect to the taxable year in which falls the date of his death."

Raymond B. Lupia was killed in action at Leyte, P. I. on January 7, 1945, while serving as a Sergeant in the United States Army. He had filed his income tax returns on a calendar year basis. At the time of his death, Lupia was a member of a partnership which filed its income tax returns on the basis of a fiscal year ending June 30. Upon Lupia's death, the partnership credited to him $7,916.61, being his share of the partnership income to the date of his death, and to his estate $8,184.05, being his share of the income for the period January 7 to June 30, 1945. No income tax was paid, and none is claimed, on the first sum. Lupia's executors reported the $8,184.05 in a timely estate income tax return, and paid a tax thereon of $2,039.52, which they subsequently sought to recover in a refund suit against the Collector. The District Court granted summary judgment in favor of the estate, from which the Collector appeals.

For the Collector, it is contended that §421 limits

"(b) the tax under this chapter and under the corresponding title of each prior revenue law for taxable years preceding those specified in clause (a) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment."

the forgiveness of income taxes to those payable for the period up to the date of the serviceman's death. Lupia's executors contend that the Statute forgives income taxes for the *full* taxable year in which death occurred.

The question has been the subject of conflicting decisions. Prior to the decision below, the taxpayer's position was upheld by former Judge Kennedy on a motion to dismiss the complaint in this action. *Lupia's Estate* v. *Marcelle*, 107 F. Supp. 552 (E. D. N. Y. 1952). The Court of Appeals for the Fifth Circuit, which Judge Byers declined to follow in the present case, has gone the other way. *Allen* v. *Bickerstaff*, 200 F. 2d 181 (5th Cir. 1952).

The position of the Collector rests largely upon a technical reading of the Statute. His argument is that since a decedent and his estate are separate taxable entities, and since §421 applies only "in the case of any *individual*."[2] the taxes forgiven are only those which relate to the period up to the date of the serviceman's death.

We think such a reading of the Statute too narrow and that it does violence to the ordinary meaning of the language used. The Statute forgives "the tax imposed * * * with respect to *the* taxable year *in which falls* the date of his death." To us this means the tax for the *full* taxable year in which death occurs. The Collector would have us interpret this provision as if it read "the tax imposed

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with respect to *that portion* of the taxable year *ending* with the date of his death." If we are to be technical, it seems reasonable to suppose that language of that import would have been used had the Congressional intent been the limited one which the Collector suggests. To overcome this difficulty, the Collector relies upon § 48(a), I. R. C., 26 U. S. C. A. § 48(a), which states that in the case of a return made for a fractional part of a year, "taxable year" as used in Chapter 1 means the period for which such return is made. The definition might conceivably have some application had Congress, in § 421, limited relief to the deceased serviceman's "last taxable year." But the use of the phrase "taxable year in which falls the date of his death" contemplates, we think, the existence of a period which may extend beyond the serviceman's death, *i.e.*, his normal taxable year.

In our view, the phrase "In the case of any individual" was simply intended to refer to the category of those members of the Armed Forces embraced within the forgiveness provisions—that is those losing their lives in service on or after Pearl Harbor day and before January 1, 1948—and was not intended to draw a distinction between the income taxes of such an individual and those of his estate with respect to the taxable year in which death occurred.

Our interpretation of § 421 seems to be in accord with Congressional pronouncements as to the purpose of the Statute. In the report of the House Committee on Way and Means on the 1947 Amend-

ment, it was stated that "no income tax is imposed for the taxable year in which" a member of the Armed Forces dies. H. Rep. No. 1006, 80th Cong., 1st Sess., pp. 1-2; U. S. Code Cong. & Admin. Serv., p. 1612. Likewise, when § 154 of the present Internal Revenue Code (26 U. S. C. A. § 154) was passed in 1951 to extend the § 421 tax relief to service personnel losing their lives in the Korean War, the Senate Report stated that under § 421 members of the Armed Forces "were forgiven their income tax with respect to the year of the death * * * " and described one of the purposes of the new legislation as being "the forgiving of income tax in the year of death of such individuals * * *" S. Rep. No. 781, 82d Cong., 1st Sess.; U. S. Code Cong. & Admin. Serv., p. 2023. Moreover, the Treasury Regulation which deals with § 421 also appears to construe the statute as we do when it states: "the tax liability in the case of such individual * * * for the taxable year *in which* occurs the date of death is cancelled * * * " T. R. 111, § 29.421-1, 1948-2 Cum. Bull. 14, 24.

The Collector's narrow construction of § 421 also appears to be gainsaid by the broad sweep of its other provisions, as originally enacted and subsequently expanded. As originally passed, § 421 forgave not only those income taxes imposed for the taxable year in which death occurred, but also those due for any prior year which were *unpaid* at the time of death, even though such unpaid taxes related to a taxable year ending prior to December 7, 1941, or to a year when the deceased serviceman

was not a member of the Armed Forces. And if such unpaid taxes were later collected, they were refundable. The 1947 amendment enlarged this relief by relieving such a deceased individual from, and making refundable, *all* income taxes paid for any taxable year ending on or after December 7, 1941 "during *any part of which*" the deceased was in the Armed Forces. And § 345 of the Revenue Act of 1951, 65 Stat. 517, C. 521, 26 U. S. C. A., Cum. Supp. § 345, enacted after the decision in *Lloyd* v. *Delaney*, 181 F. 2d 941 (1st Cir. 1950) holding § 421 inapplicable to undistributed trust income, still further extended the scope of income tax relief accorded deceased servicemen so as to embrace, within certain limits, trusts for their benefit in respect of income accumulated at their death which was payable to their estates or lineal next of kin.

Thus, the march of this remedial legislation has ever been forward. One way of putting the Collector's position here is that it attributes to §421 a purpose to equate the scope of the tax forgiveness with the end of a soldier's service during the taxable year in which he died. But since §421 clearly does not equate the *beginning* date of forgiveness with commencement of a deceased soldier's service, it seems unlikely that such an equation was intended with respect to its *ending* date by death. So far as the supposed distinction between individual and estate income taxes is concerned, it is clear that the refunding provisions of §421 can only enure to the benefit of the serviceman's estate. And it is difficult to reconcile the purpose

of the 1947 amendment of §421, *i.e.*, to put deceased servicemen who had paid their income taxes for previous taxable years ending after December 7, 1941 on the same basis with those who had not paid their taxes for such years (see Report of House Committee on Way and Means, *supra*), with a construction which would make the extent of the tax relief for the taxable year in which death occurred depend upon the circumstance of when the serviceman happened to die.

We do not consider *Lloyd* v. *Delaney, supra,* at all apposite. As Judge Wyzanski noted in his opinion in the District Court, there is a great difference between a construction of the Statute which would apply it to undistributed *trust* income, and one which "accords with its purpose of giving a benefit to the estate of a deceased serviceman." 86 F. Supp., at p. 1002. Here Lupia's estate seeks exemption from a tax which would have fallen on Lupia himself had he survived. But even if the deceased serviceman in the *Delaney* case had survived, it is clear that he would have incurred no tax liability with respect to th income accumulated in the trust, for which the trust sought exemption.

We are unable to agree with the decision of the Fifth Circuit in *Allen* v. *Bickerstaff, supra,* and must respectfully decline to follow it. We hold that §421 forgives the income taxes of a deceased serviceman, coming within its provisions, for the full taxable year in which death occurred.

Affirmed.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 2nd day of July one thousand nine hundred and fifty-four.

Present: Hon. HARRIE B. CHASE, Chief Judge, Hon. CARROLL C. HINCKS, Hon. JOHN M. HARLAN, Circuit Judges.

ESTATE OF RAYMOND LUPIA, ET AL., PLAINTIFFS-APPELLEES,

v.

JOSEPH P. MARCELLE, DEFENDANT-APPELLANT.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

(S.) A. DANIEL FUSARO,
Clerk.

Judgment filed July 2, 1954.

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute and regulations involved	2
Statement	2
Summary of Argument	3
Argument:	
Section 421 of the Internal Revenue Code of 1939 exempted income of a deceased serviceman to the date of his death, not income earned by his estate subsequent to his death	7
A. The exemption in terms applies to the individual, not to his estate	10
B. The "taxable year" to which the statute refers is the individual serviceman's taxable year, ending with his death	17
C. Analysis of the effects of the decision below buttresses the conclusion that the court misconstrued the statutory language	23
Conclusion	27
Appendix	28

CITATIONS

Cases:	
Allen v. *Bickerstaff*, 200 F. 2d 181	4, 9
Brewster v. *Gage*, 280 U. S. 327	24
Bull v. *United States*, 295 U. S. 247	11
Central Union Trust . of New York v. *United States*, 63 C. Cls. 619, certiorari denied, 275 U. S. 555	11
Cyrus H. K. Curtis, Estate of, 36 B. T. A. 899	19
B. Brasley Cohen, Estate of v. *Commissioner*, 8 T. C. 784	24

Cases—Continued Page

Guaranty Trust Co. of New York v. *Commissioner*, 30 B. T. A. 314 24
Hartley v. *Commissioner*, 295 U. S. 216 ..... 4, 11
Helvering v. *Enright*, 312 U. S. 636 11
Helvering v. *Northwest Steel Mills*, 311 U. S. 46 .. 26
Lloyd v. *Delaney*, 181 F. 2d 941 ..... 4, 12, 13, 14, 16
Putnam, Estate of v. *Commissioner*, 324 U. S. 393 .. 11
United States v. *Stewart*, 311 U. S. 60 26
Weber v. *Commissioner*, 111 F. 2d 766 24

Statutes:

Act of August 5, 1947, c. 496, 61 Stat. 778, Sec. 1 .. 7, 15
Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, Sec. 8 7
Internal Revenue Code of 1954, Sec. 692 ..... 8, 14
Internal Revenue Code of 1939, 26 U. S. C. (1952 ed.):
Section 11 10
Section 12 10
Section 13 10
Section 15 10
Section 23 13
Section 42 ..... 5, 11, 21
Section 43 ..... 5, 11, 21
Section 47 ..... 5, 11, 18
Section 48 ..... 5, 18, 19
Section 126 ..... 5, 11, 21, 22
Section 142 11
Section 154 ..... 8, 14
Section 161 ..... 10, 11
Section 162 ..... 11, 13, 24
Section 421 ..... 2, 3, 5, 6, 7, 8, 11, 14, 19, 25, 28
Revenue Act of 1941, c. 412, 55 Stat. 687 (26 U. S. C. 1952 ed., Sec. 42), Sec. 114 21
Revenue Act of 1942, c. 619, 56 Stat. 798:
Section 134 (26 U. S. C. 1952 ed., Sec. 42) .. 21
Section 135 (26 U. S. C. 1952 ed., Sec. 47) .. 18
Revenue Act of 1951, c. 521, 65 Stat. 452:
Section 334 (26 U. S. C. 1952 ed., Sec. 154) .. 8, 14
Section 345 12

Statutes—Continued Page

Technical Changes Act of 1953, c. 512, 67 Stat. 615 (26 U. S. C. 1952 ed., Supp. I, Sec. 154), Sec. 104 ..... 8, 14

Miscellaneous:

H. Conf. Rep. No. 510, 78th Cong., 1st Sess., pp. 68, 69 (1943 Cum. Bull. 1351, 1381, 1382) .. 15

H. Rep. No. 401, 78th Cong., 1st Sess., pp. 21, 42–43 (1943 Cum. Bull. 1283, 1299, 1314) 14, 15

H. Rep. No. 1006, 80th Cong., 1st Sess., pp. 1–2 .. 16

H. Rep. No. 1337, 83d Cong., 2d Sess., p. A221 .. 16

S. Rep. No. 221, 78th Cong., 1st Sess., p. 48 (1943 Cum. Bull, 1314, 1349) 15

S. Rep. No. 711, 80th Cong., 1st Sess., pp. 1–2 .. 16

S. Rep. No. 781, 82d Cong., 1st Sess., p. 52 (1951–2 Cum. Bull. 485, 495) 16

S. Rep. No. 1622, 83d Cong., 2d Sess., p. 376 16

Treasury Regulations 111 (promulgated under the Internal Revenue Code of 1939).

Section 29.47–1 ..... 5, 18

Section 29.154–1 (as added by T. D. 5976, 1953–1 Cum. Bull. 26, 29) 16

Section 29.421–1 (as added by T. D. 5305, 1943 Cum. Bull. 260, 271, and amended by T. D. 5645, 1948–2 Cum. Bull. 14, 23) .. 16, 25, 29

Treasury Regulations 118:

Section 39.154–1 16

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 368

JOSEPH P. MARCELLE, PETITIONER

v.

ESTATE OF RAYMOND LUPIA, BRUNO LUPIA AND AMELIA LUPIA, EXECUTORS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court (R. 10–12) is reported in 109 F. Supp. 6. The opinion of the Court of Appeals (R. 14–18) is reported in 214 F. 2d 942.

JURISDICTION

The judgment of the Court of Appeals was entered on July 2, 1954. The petition for a writ of certiorari was filed on September 27, 1954, and granted on November 15, 1954. (R. 19.) The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Section 421 of the Internal Revenue Code of 1939 provided that "In the case of any individual" who dies while in active service as a member of the armed forces, the income tax "shall not apply with respect to the taxable year in which falls the date of his death". The question presented is whether the statute, in addition to forgiving the income tax liability of the deceased serviceman up to the date of his death, also cancels the liability of his estate in respect to income realized by it subsequent to the serviceman's death but within the same year.

STATUTE AND REGULATIONS INVOLVED

The statutory provision involved is Section 421 (a) and (b) of the Internal Revenue Code of 1939 and the Treasury Regulations involved are Section 29.421–1 of Treasury Regulations 111; both are set forth in the Appendix, *infra,* pp. 28–31.

STATEMENT

The facts in this case, which are undisputed, are as follows:

Technical Sergeant Raymond B. Lupia, the decedent, died on January 7, 1945, while serving as a member of the armed forces of the United States. During his lifetime, he filed his income tax returns on a calendar year basis. He was a member of a business partnership which filed its

income tax returns on the basis of a fiscal year ending June 30. (R. 1–3, 8.)

For the fiscal year ended June 30, 1945, the partnership credited to Raymond Lupia, deceased, the sum of $7,916.61 as his share in the partnership income, and credited a share in the amount of $8,184.05 to the estate of Raymond Lupia, which latter amount was for the period January 7 to June 30, 1945. No tax was paid with respect to the partnership income credited to Raymond Lupia. However, the taxpayer-estate filed a timely income tax return for the period January 7 to December 31, 1945, reporting the $8,184.05 partnership income credited to it upon which a tax of $2,039.52 was paid. (R. 2–3, 8.)

On December 11, 1946, the taxpayer filed a claim for refund of the income tax paid by it for 1945 (R. 3) and, more than six months thereafter, on March 13, 1952, instituted this suit against the Collector for refund thereof (R. 1). Upon a motion for summary judgment (R. 7), the District Court entered an order granting the taxpayer a summary judgment in the amount sought with interest (R. 13).

The Collector appealed and the Court of Appeals affirmed the decision of the District Court. (R. 14–18.)

SUMMARY OF ARGUMENT

Section 421 grants an exemption solely for the individual serviceman for *his* taxable year, which

ends with his death. It does not exempt income earned by his estate after his death. This conclusion follows from the statutory language, especially when the language is considered in the context of the Internal Revenue Code. It is fortified by consideration of the incongruities resulting from the decision below.

A. "The revenue acts consistently treat the estate of a decedent in the hands of an administrator or executor as a separate taxpayer." *Hartley* v. *Commissioner*, 295 U. S. 216, 218. In the light of this consistent pattern, it is significant that Section 421 refers solely to the individual and his tax liability, nowhere to his estate and its tax liability. See *Lloyd* v. *Delaney*, 181 F. 2d 941, 943 (C. A. 1). The language affords "no warrant * * * for holding that the abatement extends also to the income tax due by such an individual's estate." *Allen* v. *Bickerstaff*, 200 F. 2d 181, 182 (C. A. 5). Like the language, its legislative history and contemporaneous Treasury Regulations point to the same conclusion.

B. The "taxable year" to which the statute refers is the individual serviceman's taxable year, ending with his death. True, as the court below emphasized (R. 16–17), the reference to "the taxable year in which falls the date of his death" might well be read, when considered alone, to describe a period extending beyond his death. However, in the usage established by related sec-

tions of the Internal Revenue Code, it is clear that the quoted phrase aptly describes the individual serviceman's taxable year and that this is a period ending with his death. Thus, Section 47 (g) provides that, for a taxpayer in existence for less than a full calendar year, the return shall be for the fractional part of the year during which the taxpayer was in existence. And Section 48 (a) defines "taxable year," in the case of a return made for less than a full year, as "the period for which such return is made." In accordance with this scheme, Treasury Regulations 111, Section 29.47–1, provides that "The return of a decedent *for the taxable year in which falls the date of his death* is a return for the period during which he was alive." (Emphasis added.) The same usage is employed elsewhere in the Code. Sections 42 (a), 43, 126 (a) (1), 126 (b).

In the light of this usage, Section 421 is plainly harmonious and consistent when it refers only to the individual and to a single taxable year. Under the construction of the court below, there are not only two taxable entities (individual and estate), but two necessarily separate taxable years (the individual's and the estate's) to be covered by the singular nouns of the statute. But the justification for this extension disappears when it is recognized that "the taxable year in which falls the date of his death" exactly describes the serviceman's own taxable year, ending with his death.

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C. It frequently happens that an individual's survivors, rather than his estate, receive taxable income from property acquired from him immediately upon his death. This is true where his will directs income distributions to them, where (as with realty) his death immediately vests title in them, or where they were joint owners with him with rights of survivorship. There is no basis in Section 421, and the decision below suggests none, for extending the exemption of Section 421 to such persons. For if it be assumed that "individual" may be read to cover both an individual and his estate, it certainly cannot be read to cover one individual plus other individuals. And so, under the decision below, it may well result that those nearest a deceased serviceman pay taxes on the income of property derived directly from him while those taking from the estate of another serviceman are granted an exemption. This probable incongruity only highlights, in our view, the error of the court below. It demonstrates the propriety of confining the exemption to the terms of the statute. These cover the income of the deceased serviceman during his taxable year, not the income of his estate and its separate taxable year.

ARGUMENT

SECTION 421 OF THE INTERNAL REVENUE CODE OF 1939 EXEMPTED INCOME OF A DECEASED SERVICEMAN TO THE DATE OF HIS DEATH, NOT INCOME EARNED BY HIS ESTATE SUBSEQUENT TO HIS DEATH

Section 421 of the Internal Revenue Code of 1939, as it read during the period involved in this case, provided:

> In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—
>
> (a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces * * *.[1]

[1] The quoted Section 421, which applies here, was added to the Internal Revenue Code of 1939 by Section 8 of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, and amended by Section 1 of the Act of August 5, 1947, c. 496, 61 Stat. 778. It expired by its own terms on December 31, 1947. Subsequent provisions incorporated in the Code as Section 421 were concerned with other matters. Provisions similar to those at issue here, relating to members of the

The narrow question in this case is whether this provision forgives only the taxes of a deceased serviceman for his taxable year (which ends with the date of his death) or whether it forgives in addition the taxes on the income of his estate during the remainder of what would have been the serviceman's taxable year had he not died. It is the Government's position that the statute in plain language applies to the individual and that "*the* taxable year" to which it refers is *his* taxable year, ending with his death. The estate of such an individual, from the date of his death, is clearly a separate taxable entity with a separate taxable year, separately identified and separately taxed in the pertinent provisions of the Internal Revenue Code. We think the court below erred in extending to income earned by the estate after the serviceman's death the exemption granted in Section 421.

Adopting the position urged here, in a decision directly in conflict with that of the court below,

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armed forces dying while serving in a combat zone during the period June 24, 1950, to January 1, 1954, were contained in Section 154 of the Internal Revenue Code of 1939, which was added by Section 334 of the Revenue Act of 1951, c. 521, 65 Stat. 452 (26 U. S. C. 1952 ed., Sec. 154). The expiration date of this provision was extended to January 1, 1955, by Section 104 of the Technical Changes Act of 1953, c. 512, 67 Stat. 615 (26 U. S. C. (1952 ed., Supp. I) Sec. 154). Substantially identical provisions have been embodied in Section 692 of the Internal Revenue Code of 1954, but without any termination date.

the Court of Appeals for the Fifth Circuit declared (*Allen* v. *Bickerstaff*, 200 F. 2d 181, 182):

> We are unable to discern in the language of the statute any evidence of Congressional intent to abate or forgive income tax due by any taxable entity other than the individual serviceman. The statute is expressly restricted to the case "of any individual" who dies in active service. We find no warrant in the statute for holding that the abatement extends also to the income tax due by such an individual's estate. The statute relates to individual liability and not estate liability. The two are entirely different, as is well recognized by the provisions of the Internal Revenue Code. The statute in question deals with individual liability and its language "taxable year in which falls the date of his death" does not provide an extension of the abatement or forgiveness to include all taxes which the serviceman would otherwise have been required to pay had he lived. Such a construction would be necessary to support a holding that the abatement related to the estate for the remainder of the taxable year in which the serviceman died, as well as to those which accrued during the lifetime of the individual. "Taxable year" as defined by the statute may mean either a whole or a fractional year, and the use of this term is not sufficient to authorize importation of estate liability into the exemption provided for individual liability. [Footnotes omitted.]

There is no disagreement, to be sure, with the observation of the court below (R. 11, 12) that since Section 421 relates to a deceased serviceman, the exemption it confers necessarily benefits his estate and his beneficiaries. But it by no means follows that the exemption for the serviceman's income and the serviceman's taxable year extends to income earned by his estate—or, indeed, by the heirs or devisees who receive his property—after his death. The problem is simply to determine the scope of the exemption—to whose income it applies and for what period. In the discussion which follows, we undertake to show that the solution reached by the Fifth Circuit is correct; that it accords not only with the language of Section 421 but with the scheme of separately taxing individuals and their estates to which this provision must be related; and that the alternative adopted by the court below introduces anomalies and inconsistencies which further demonstrate its error.

A. THE EXEMPTION IN TERMS APPLIES TO THE INDIVIDUAL, NOT TO HIS ESTATE

The income tax levied by Chapter 1 of the Internal Revenue Code of 1939 is imposed upon three separate and distinct classes of taxpayers—(1) individuals (Secs. 11 and 12), (2) corporations (Secs. 13 and 15), and (3) estates and trusts (Sec. 161). "The revenue acts consistently treat the estate of a decedent in the hands of an

administrator or executor as a separate taxpayer." *Hartley* v. *Commissioner,* 295 U. S. 216, 218. Of necessity, a final return, relating to the taxable period ending with the date of death, must be filed on behalf of a decedent by his executor or administrator. *Central Union Trust Co. of New York* v. *United States,* 63 C. Cls. 619, certiorari denied, 275 U. S. 555. It is nevertheless clear beyond dispute that income includible in the decedent's final return is distinct from income which is thereafter taxed to his estate, or is taxed directly to his beneficiaries. See Sections 42 (a), 43, 47 (g), 126, 142, 161 and 162 of the Internal Revenue Code of 1939 (26 U. S. C. 1952 ed., Sections 42, 43, 47, 126, 142, 161 and 162). Cf. *Bull* v. *United States,* 295 U. S. 247; *Hartley* v. *Commissioner,* 295 U. S. 216, 218; *Helvering* v. *Enright,* 312 U. S. 636; *Estate of Putnam* v. *Commissioner,* 324 U. S. 393.

At least when it is read with this consistent pattern of which it is a part, the language of Section 421 seems clearly to exempt only the income of the deceased serviceman, not income earned by and taxable to his estate after his death. The section is declared at its outset to apply "In the case of any *individual* who dies * * * while in active service as a member of the military or naval forces" (emphasis added). There is no reference to the subsequent income of the individual's estate or of his beneficiaries.

Only the individual is named—in a context where individual and estate are treated separately throughout. As Chief Judge Magruder has said, writing for the Court of Appeals for the First Circuit in *Lloyd* v. *Delaney*, 181 F. 2d 941, 943:

> When in subsection (a) Congress refers to "the tax imposed by this chapter", the natural inquiry is, whose tax are they talking about? The answer is found in the limiting language of the introductory clause of the section: "In the case of any individual" who dies in active service, etc. The meaning is the same as if by transposition of language the section had read as follows: "The tax imposed by this chapter in the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States * * * shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such armed forces."[2]

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[2] Holding the exemption in Section 421 applicable only to the individual serviceman's income, the Court concluded in *Lloyd* v. *Delaney* that income accumulated by a trust for his benefit, and, in the event of his death, for the benefit of his issue, remained taxable to the trust. Thereafter, in Section 345 of the Revenue Act of 1951, c. 521, 65 Stat. 452, Congress altered this result by allowing a deduction to the trust in such cases where accumulated income not distributed to the serviceman before his death "was payable by the trust

Not only is the language of Section 421 aptly suited on its face to refer to the individual, and to the individual alone, but it follows the form repeatedly used in the Revenue Code to define the scope of coverage. To cite only a few random examples, Section 23 (a) (2), relating to deductions for certain expenses, applies "[i]n the case of an individual"; Section 23 (f) deals with losses "[i]n the case of a corporation"; Section 23 (k) (4) concerns deductions for non-business bad debts "[i]n the case of a taxpayer, other than a corporation"; and Section 162, undertaking, with certain exceptions, to treat estates and trusts like individuals (not, it may be emphasized, merely as extensions of the individuals from whose deaths or conveyances they arise), provides for computation of their income "as in the case of an individual * * *."[3] In each instance, legislating in an area of well-worked technical meanings, the objective is to say no more and no less than what is meant. And so, we think, when Section 421 refers to "the tax imposed" "[i]n the case of any

at or after his death only to his estate, spouse, or lineal ancestors or descendants." Of interest for present purposes is the fact that the cut-off point for this relief provision is the date of the serviceman's death. It does not apply to income accumulated by the trust for the benefit of his estate or his beneficiaries after his death.

We agree with the court below (R. 18) that the *Lloyd* case is distinguishable from this one. Its reasoning, however, accords with the view we urge here.

[3] The references are all to the Internal Revenue Code of 1939, 26 U. S. C. (1952 ed.), which is applicable in this case.

individual," it means just that, not the tax imposed in the case of his estate or his beneficiaries.

In conformity with the body of the statute, Section 421 was captioned, "Abatement of Tax for Members of Armed Forces upon Death."[4] Here, again, the reference is to the individual serviceman and his taxes. The abatement is described as coming into effect "upon death," which is the point marking the end of the individual's accruing tax liabilities and the end of the taxable period for which his taxes are payable. See pp. 17–23, *infra*.

Like the statutory language, its "legislative history all indicates that what Congress was concerned with was the *individual income tax liability* of members of the armed forces dying in active service." *Lloyd* v. *Delaney, supra,* at 944 (emphasis added). In its general discussion of this provision, the Report of the House Committee on Ways and Means said (H. Rep. No. 401, 78th Cong., 1st Sess., p. 21 (1943 Cum. Bull. 1283, 1299)):

> Another relief provision *applies to individuals* dying in the active service as a

[4] The counterparts of Section 421 in subsequent statutes have had similar captions: "Income Taxes of Members of Armed Forces upon Death" (Internal Revenue Code of 1939, Section 154, as added by Section 334 of the Revenue Act of 1951, c. 521, 65 Stat. 452, and amended by Section 104 of the Technical Changes Act of 1953, c. 512, 67 Stat. 615); "Income Taxes on Members of Armed Forces on Death" (Internal Revenue Code of 1954, Section 692).

> member of the military or naval forces of the United States. Any Federal income tax which is outstanding at the time of the death of such individual (including interest, additions to the tax, and additional amounts) is abated and if collected after the date of death will be refunded. [Emphasis added.]

And in its detailed discussion of the provision, the same Report (pp. 41–42, 1943 Cum. Bull. at 1314) stated: "Supplement U relieves a member of the military or naval forces of the United States who dies in active service from the liability for the tax imposed by chapter 1 for the taxable year in which falls the date of his death." Substantially identical descriptions of the bill appear in the Senate and Conference Reports. S. Rep. No. 221, 78th Cong., 1st Sess., p. 48 (1943 Cum. Bull. 1314, 1349); H. Conf. Rep. No. 510, 78th Cong. 1st Sess., pp. 68, 69 (1943 Cum. Bull. 1351, 1381, 1382).[5] Everywhere, the references

[5] The subsequent history of Section 421 confirms the congressional purpose to deal only with the individual tax liability of the deceased serviceman. As originally enacted, Section 421 not only extended relief with respect to the individual's tax for the taxable year in which he died, but abated any tax unpaid at death for any earlier taxable year. Income taxes paid prior to death for prior taxable years were not refundable, even though they related to years in which he had served in the armed forces. The effect of this was to encourage delay in the payment of taxes since, except for the tax liability for the year in which death occurred, there was no refund of taxes paid prior to death. To correct the inequities resulting from this situation, Section 1 of the Act

are to the deceased serviceman and his tax liabilities; nowhere is there any suggestion that the exemption is to carry forward to income earned by the serviceman's estate after his death.

Finally, contemporaneous Treasury Regulations, paraphrasing Section 421 as the First Circuit later did in *Lloyd* v. *Delaney* (*supra*, p. 12), provide that "the tax liability in the case of such individual under chapter 1 for the taxable year in which occurs the date of death is canceled." Treasury Regulations 111, Section 29.421–1 (a), Appendix, *infra*, p. 29.[a] The

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of August 5, 1947, c. 496, 61 Stat. 778, amended Section 421 of the Internal Revenue Code of 1939 so as to relieve from income tax an individual who died while in active service, the relief being for the taxable year in which fell the date of his death and for prior taxable years (after December 7, 1941) in which he was a member of the armed forces, as well as for taxes remaining unpaid for years before his service in the armed forces. Again, the Committee Reports are clear to the effect that Congress was dealing with the tax liability of the individual serviceman; again, there is not the slightest suggestion that it intended to relieve his estate of any tax liability with respect to income earned by it after his death. H. Rep. No. 1006, 80th Cong., 1st Sess., pp. 1–2; S. Rep. No. 711, 80th Cong., 1st Sess., pp. 1–2.

Similar descriptions appear in the legislative reports on subsequent enactments corresponding to Section 421 (note 1, pp. 7–8, *supra*). See S. Rep. No. 781, 82d Cong., 1st Sess., p. 52 (1951–2 Cum. Bull. 458, 495); H. Rep. No. 1337, 83d Cong., 2d Sess., p. A221; S. Rep. No. 1622, 83d Cong., 2d Sess., p. 376.

[a] Like provisions appear in Section 29.154–1 of Treasury Regulations 111, as added by T. D. 5976, 1953–1 Cum. Bull. 26, 29, and in Section 39.154–1 of Treasury Regulations 118, promulgated under the Internal Revenue Code of 1939,

pertinent materials—statute, history, and regulations—all pertain, in short, precisely and exclusively to the individual and his liability.

B. THE "TAXABLE YEAR" TO WHICH THE STATUTE REFERS IS THE INDIVIDUAL SERVICEMAN'S TAXABLE YEAR, ENDING WITH HIS DEATH

The court below thought (R. 16–17) that "the use of the phrase 'taxable year in which falls the date of his death' contemplates * * * the existence of a period which may extend beyond the serviceman's death, *i. e.*, his normal taxable year." It concluded, therefore (R. 17), that the reference exclusively to the "individual" "was not intended to draw a distinction between the income taxes of such an individual and those of his estate with respect to the taxable year in which death occurred." While that analysis is undoubtedly persuasive when the language upon which it rests is considered in isolation, it becomes unsatisfactory, we think, when the language is examined in the context of the sentence and the Code in which it appears. For such examination discloses (1) that Section 421 refers to a single entity (the individual) with a single taxable year, whereas the individual plus his estate are two taxable entities with separate taxable years; and (2) that "the taxable year in which falls the date

applicable only to years beginning after December 31, 1951, interpreting Section 154 of the Internal Revenue Code of 1939, which, as we have noted (*supra*, pp. 7–8, n. 1) is a later enactment corresponding to Section 421.

of [the individual's] death" is a period ending with, not extending beyond, his death.

Section 47 (g) of the Internal Revenue Code of 1939 [7] provides:

> In the case of a taxpayer not in existence during * * * the whole of a calendar year, the return shall be made for the fractional part of the year during which the taxpayer was in existence.

Subsection (b) of the same Section provides that—

> * * * where a separate return is required or permitted, by regulations prescribed by the Commissioner with the approval of the Secretary, to be made for a fractional part of a year, then the income shall be computed on the basis of the period for which separate return is made.

And Section 48 ("Definitions"), subsection (a),[8] provides:

> * * * "Taxable year" means, in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made.

Following and implementing these statutes, sec-

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[7] Added to Section 47 by Section 135 (c) of the Revenue Act of 1942, c. 619, 56 Stat. 798 (26 U. S. C. 1952 ed., Sec. 47 (g)).

[8] As amended by Section 135 (d) of the Revenue Act of 1942, *supra*, note 7 (26 U. S. C. Sec. 48 (a)).

tion 29.47–1 of Treasury Regulations 111 provides that "The return of a decedent *for the taxable year in which falls the date of his death* is a return for the period during which he was alive." (Emphasis added.)

Applying these provisions to the case of respondent's testator—or to that of any other deceased serviceman whose income is exempted by Section 421—it is clear that the "taxable year in which [fell] the date of his death" was the portion of the calendar year ending with his death.[9] It is equally clear that the "taxable year" of his estate is a separate period, beginning with the date of his death and extending to either (1) the end of the calendar year or (2) the end of any month other than December if the estate is administered on a fiscal-year basis. See 26 U. S. C. 1952 ed., Sec. 48 (b); and see *Estate of Cyrus H. K. Curtis,* 36 B. T. A. 899, appeal dismissed December 1, 1938 (C. A. 3d). When these facts are recognized, the construction adopted by the court below, though reasonable if Section 421 is considered by itself as a purely grammatical proposition, is found to be irreconcilable with the meaning of the terms in their technical context. The Section refers to a single "individual" and to "the taxable year"—a single taxable year—in

[9] Respondent's testator was a calendar year taxpayer (R. 8). For the case of a serviceman on a fiscal-year basis the "taxable year in which falls the date of his death" would, of course, be the fraction of his fiscal year ending with his death.

which his death falls. These words accomplish exactly the result for which we contend, and no more; they exempt from the income tax the serviceman's income for the taxable period ending with his death.

On the other hand, the alternative adopted by the court below not only adds immediately to what Congress wrote, but raises unanswered questions which may require still further alteration. To illustrate, the court concludes that the estate must be exempted from the income tax for the remainder of the calendar year which would have been part of the deceased serviceman's "taxable year" had he lived. But not only is this period not the taxable year of the decedent; it may not be the taxable year of the estate either. As we have noted, the estate may return its taxes on the basis of a fiscal year. If so, is the estate's income exempt only until the end of the calendar year, though this does not cover a "taxable year" of the estate at all? Or is it exempt for its full fiscal year, though this extends beyond what would have been the decendent's taxable year? The statute, referring only to "the taxable year," affords no answer to these questions. And the reason, we submit, is that the reference is related to the individual the statute describes, not his estate, and exempts only his income for his taxable year, which ends with his death.

The problem would be simpler, to be sure, had Congress spoken in terms of a "taxable period ending with the individual's death" rather than "the taxable year in which falls the date of his death." But whatever merit such phraseology might have had as an isolated matter of language, the terms actually employed achieve the precise result we urge when they are fitted to the scheme of the Code. Moreover, sections of the Code other than those we have already mentioned embody the same usage. Thus, Sections 42 (a)[10] and 43[11] provide that, in the case of the death of a taxpayer whose net income was computed by the accrual method of accounting, income, deductions and credits accrued "only by reason of the death of the taxpayer shall not be" included or allowed "in computing net income for the *period in which falls the date of the taxpayer's death.*" (Emphasis added.) Complementing those provisions, Section 126 (a) (1)[12] provides that income in respect of a decedent which is "not properly includible in respect of the *taxable period in which falls the date of his death* or a prior period" (emphasis added) shall be included in the taxable year of receipt in the gross income of the

[10] As amended by Section 114 of the Revenue Act of 1941, c. 412, 55 Stat. 687, and Section 134 (a) of the Revenue Act of 1942, c. 619, 56 Stat. 798 (26 U. S. C. 1952 ed., Sec. 42).

[11] As amended by Section 134 (b) of the Revenue Act of 1942, *supra*, note 10 (26 U. S. C. 1952 ed., Sec. 43).

[12] Section 126 was added by Section 134 (e) of the Revenue Act of 1942, *supra*, note 10 (26 U. S. C. 1952 ed., Sec. 126).

decedent's estate, or of the person acquiring the right to receive the amount either directly, as a result of the decedent's death, or from the estate. Section 126 (a) (3), in providing for the determination of the character of such income, places the person acquiring the right to receive it in the same position as the decedent, and specifies that the amount includible in gross income "shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount." Section 126 (b), with reference to certain deductions and credits "not properly allowable to the decedent in respect of *the taxable period in which falls the date of his death,* or a prior period" (emphasis added), provides for the allowance of these deductions and credits when paid to the estate of the decedent or, if the estate is not liable for the obligation to which the deduction or credit relates, to the person who has acquired an interest in property directly as a result of the death of the decedent or from his estate subject to such obligation. Throughout these provisions, the references to "the period *in which* [not "at the end of which"] falls the date of the taxpayer's death" describe a period ending with the taxpayer's death. The purpose of these sections is to divide the deceased taxpayer's tax liabilities, terminating their accrual with his death, from those of taxable entities (his estate or legatees)

whose liabilities for income tax on his income-producing property commence with his death. And the purpose is accomplished through language substantially identical with that of Section 421.

Thus, the construction we urge is supported not only by the need to harmonize the statutory reference to a single "taxable year" with its coverage of a single "individual," but by the fact that comparable usage in related sections of the Code points precisely to this result. It is not inappropriate, we think, to appraise the technical terms of the taxing statutes in their technical context. And although the Collector's "technical reading" is condemned by the court below (R. 16), it turns out that the court's alternative produces gaps and incongruities in the statute's operation which cannot be justified by any supposed congressional purpose. We turn, finally, to some of the problems raised rather than settled by the decision below.

C. ANALYSIS OF THE EFFECTS OF THE DECISION BELOW BUTTRESSES THE CONCLUSION THAT THE COURT MISCONSTRUED THE STATUTORY LANGUAGE

Though the decision below equates the deceased serviceman's estate with the serviceman for the remainder of what would have been the serviceman's taxable year had he lived, there is no suggestion that a similar identity exists between the serviceman and his heirs, legatees, or other sur-

vivors. Yet odd results follow unless the decision is extended in this way.

The Code recognizes and provides for the numerous situations where survivors, not the estate, begin immediately upon a decedent's death to realize taxable income from property left to them. A will may provide that income of the estate "is to be distributed currently * * * to the legatees," in which case such income is taxable to the legatees, not to the estate. 26 U. S. C. 1952 ed., Sec. 162 (b). Real property, passing directly to heirs or devisees (see *Brewster* v. *Gage*, 280 U. S. 327, 334), may produce income for these takers, taxable to them and not to the estate. See *Weber* v. *Commissioner*, 111 F. 2d 766 (C. A. 2); *Guaranty Trust Co. of New York* v. *Commissioner*, 30 B. T. A. 314; cf. *Estate of B. Brasley Cohen* v. *Commissioner*, 8 T. C. 784. Property owned jointly by serviceman and spouse may vest exclusively in the latter, rendering her solely taxable on its income after his death.

There is no remote basis in Section 421 for holding that in such likely cases as we have enumerated the survivors of the serviceman enjoy an exemption from their individual tax liability for the remainder of what would have been his taxable year. If "individual" can be read to encompass the individual plus his estate, it surely cannot be read to encompass the individual plus some uncertain number of additional individuals. But unless this extra addition is placed upon the

statute, the most obvious objects of the serviceman's bounty may find themselves liable for income taxes from the date of his death if they take property directly from him, while survivors of another serviceman, taking through his estate, are benefited by an exemption.

Discussion of such substantial possibilities as we have suggested could be extended. Enough has been said, we think, to demonstrate that the Collector's technical reading is actually the only one which renders Section 421 coherent, consistent, and complete. This is so from the standpoint of both the statutory language and the possible consequences of the lower court's alternative construction.

It is true, as the court below observed (R. 18), that the interpretation urged here has the effect of ending the exemption with the serviceman's death though the liability forgiven may reach behind the beginning of his service. But the decisive point remains that these terminal points cover the liability of the *individual serviceman* to whom the exemption is explicitly limited.[13] And it is

[13] Thus, although the statute forgives the serviceman's tax liability for prior years, there is no comparable cancellation for the wife, even where joint returns may have been filed. Implementing this restriction, Section 29.421–1 of Treasury Regulations 111, Appendix, *infra*, p. 30, provides that "the tax abated, credited, or refunded [for prior years] * * * shall be an amount equal to that portion of the joint tax liability which is the same percentage of such joint tax liability as a tax computed upon the separate income of such individual is of the sum of the taxes computed upon the separate incomes of such individual and his spouse * * *."

not surprising, either as an original proposition or in the context of the Code, that an exemption accorded on account of death should treat the date of death as significant.

We reemphasize, in conclusion, that the narrow problem in this case is simply to define the scope of the exemption Congress wrote. Because it is concerned with servicemen dying in service, whose rightful claims upon the nation's generosity ought not to be weighed in a niggardly spirit, Section 421 may well warrant discarding the customary principle of strict construction applied to statutes creating exemptions. *Helvering* v. *Northwest Steel Mills,* 311 U. S. 46, 49; *United States* v. *Stewart,* 311 U. S. 60, 71. But it does not follow that the exemption may be extended beyond the limits Congress authorized. We think the decision below effects such an extension—uncertain in its dimensions and, in any event, unauthorized by the language of the statute.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed.

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JANUARY 1955.

APPENDIX

Internal Revenue Code of 1939:

SEC. 421 [As added by Sec. 8 of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, and as amended by Sec. 1 of the Act of August 5, 1947, c. 496, 61 Stat. 778]. ABATEMENT OF TAX FOR MEMBERS OF ARMED FORCES UPON DEATH

In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—

(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces; and

(b) the tax under this chapter and under the corresponding title of each prior revenue law for taxable years preceding those specified in clause (a) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(26 U. S. C. 1946 ed., Supp. II, Sec. 421.)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

> SEC. 29.421-1 [As added by T. D. 5305, 1943 Cum. Bull. 260, 271, and amended by T. D. 5645, 1948-2 Cum. Bull. 14, 23]. *Abatement of Tax for Members of the Armed Forces on Death.*—If an individual dies on or after December 7, 1941, and before January 1, 1948, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations, then—
>
> (a) the tax liability in the case of such individual under chapter 1 for the taxable year in which occurs the date of death is canceled and if the tax (including interest, additions to the tax, and additional amounts) is assessed, the assessment shall be abated and if the amount of such tax is collected (regardless of the date of collection) the amount so collected shall be credited or refunded as an overpayment;
>
> (b) the tax liability in the case of such individual under chapter 1 for any taxable year (ending on or after December 7, 1941) prior to the year in which occurs the date of death during any part of which he was a member of such forces is canceled and if the tax (including interest, additions to the tax, and additional amounts) is assessed, the assessment shall be abated and if the amount of such tax is collected, the amount so collected shall be credited or refunded as an overpayment and if at any time prior to January 1, 1948, the allowance of a

credit or refund of an overpayment of such amount is barred (except for the provisions of section 3801) by the operation of any law or rule of law, a credit or refund of the overpayment of such amount may be allowed or made provided claim therefor is filed before January 1, 1949; and

(c) that amount of tax for taxable years preceding those specified in (a) and (b) above under chapter 1, or corresponding provisions of prior revenue laws, which remains unpaid as at the date of death shall not be assessed, and if any such unpaid tax (including interest, additions to the tax, and additional amounts) has been assessed, such assessment shall be abated and if the amount of any such unpaid tax is collected subsequent to the date of death, the amount so collected shall be credited or refunded as an overpayment.

If such individual and his spouse have for any such year filed a joint return, the tax abated, credited, or refunded pursuant to the provisions of section 421 for such year shall be an amount equal to that portion of the joint tax liability which is the same percentage of such joint tax liability as a tax computed upon the separate income of such individual is of the sum of the taxes computed upon the separate incomes of such individual and his spouse, but with respect to taxable years during which such individual was at no time a member of the military or naval forces of the United States or any of the other United Nations and with respect to taxable years ending before December 7, 1941, the

amount so abated, credited, or refunded shall not exceed the amount unpaid at the date of death. For such purpose the separate tax of each spouse shall be the tax computed under chapter 1 before the application of sections 32, 35, and 466 (e), but after the application of section 31, as if such spouse were required to make a separate return, except that each spouse shall be entitled to one-half of the personal exemption allowed on the joint return.

If an individual whose tax is canceled under section 421 and his spouse filed a joint declaration of estimated tax for the taxable year in which occurs the date of death of such individual, the estimated tax paid pursuant to such declaration may be treated as the estimated tax of either such individual or his spouse, or may be divided between them, according as his legal representative and his spouse may agree. Should they agree to treat the estimated tax paid pursuant to such joint declaration as the estimated tax of such individual, the estimated tax so paid shall be credited or refunded as an overpayment for the taxable year ending with the date of death of such individual.

This section applies only if the death occurs while the individual is in active service. A person is in the active service of the military or naval forces if he is actually serving in such forces, not necessarily in the field or in the theater of war. Personnel in the inactive reserves or on retirement are not in active service. Periods during which a person is absent from duty on account of sickness, wounds, leave, internment by the enemy, or other lawful cause are periods of active service.

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IN THE

Supreme Court of the United States

October Term, 1954

No. 368

JOSEPH P. MARCELLE,

Petitioner,

v.

ESTATE OF RAYMOND LUPIA, BRUNO LUPIA AND AMELIA LUPIA,

Executors.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

LEON LONDON
LLOYD GEORGE SOLL

INDEX

PAGE

QUESTION PRESENTED 1

SUMMARY OF ARGUMENT 2

ARGUMENT:

Section 421 of the Internal Revenue Code of 1939 requires that the estate of this deceased serviceman be relieved from income tax for the full year during which he dies 3

A. The purpose of Section 421 and the legislative history accord with the literal language of the statute granting tax relief to the estate of a deceased serviceman for the normal taxable year in which he dies 4

B. The phrase "the taxable year in which falls the the date of his death" does not refer to the portion of the serviceman's taxable year ending with the date of his death 10

1. The "taxable year" to which the statute refers should not be interpreted in the context of other provisions of the Internal Revenue Code related to the technical requirements of filing returns 10

2. Even if the taxpayer concedes that the expression "taxable year" may describe a period of less than twelve months, the relief afforded by Section 421 is not restricted to the portion of the taxable year ending with the date of the serviceman's death 12

PAGE

C. The use of the word "individual" does not restrict the forgiveness to that portion of the serviceman's taxable year ending with the date of his death 17

CONCLUSION 21

CITATIONS

CASES:

Allen v. Bickerstaff, 102 F. Supp. 840 4
Clark v. Mechanic's American National Bank, 282 Fed. 589 21
Lloyd v. Delaney, 86 F. Supp. 1001 affirmed 181 F. 2d 941 ..... 19, 20

STATUTES:

Internal Revenue Code of 1939, 26 U. S. C. (1952 ed.):

Sec. 23 19
Sec. 42 12
Sec. 43 12
Sec. 47 11
Sec. 48 ..... 11, 14
Sec. 126 12
Sec. 154 ..... 8, 8n, 10, 18
Sec. 161 ..... 3, 6, 17
Sec. 162 19
Sec. 421 ..... 2, 3, 4, 4n, 5, 6, 7, 7n, 8, 9, 10, 11, 12, 14, 16, 17, 20, 21

PAGE

Internal Revenue Code of 1954 26 U. S. C. Sec. 692 ..... 16n
Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. (50 U. S. C. A. App. §573) 9
Technical Changes Act of 1953 c. 512, 67 Stat. 452 (26 U. S. C. (1952 ed.), §104) 8n

MISCELLANEOUS:

H. Conf. Rep. No. 510, 78th Cong., 1st Sess. pp. 68, 69 (1943 Cum. Bull. 1351 at pp. 1381-1382) 6n
H. Rep. No. 401, 78th Cong., 1st Sess., pp. 21 and 41 (1943 Cum. Bull. 1283 at pp. 1299 and 1314) 6n
H. Rep. No. 1106, 80th Cong., 1st Sess. pp. 1-2 ..... 7, 18
H. Rep. No. 1213 (Conference Report) 82nd Cong., 1st Sess., 1951-2, Cum. Bull. 622, 632 18
H. Rep. No. 894, 83rd Cong., 1st Sess. (1953-2 Cum. Bull. 508, 516) 9
S. Rep. No. 221, 78th Cong., 1st Sess., p. 48 (1943 Cum. Bull. 1314, 1349) 6n
S. Rep. No. 711, 80th Cong., 1st Sess., pp. 1-2 ..... 7, 18
S. Rep. No. 781 82nd Cong., 1st Sess., Sept. 18, 1951 (1951-2 Cum. Bull. 458, 495) 8, 18

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BRIEF FOR THE RESPONDENT

Question Presented

The question here presented is whether the forgiveness of Section 421 of the Internal Revenue Code applies only to that portion of the serviceman's taxable year ending with the date of his death or whether the forgiveness is also applicable to income thereafter earned by his estate for the balance of the year during which he died.

Summary of Argument

The measure of tax forgiveness granted by Section 421 must be determined by reference to the period during which the income tax shall not apply. The language of the statute forgives the tax for "the taxable year in which falls the date of the [serviceman's] death." That language literally describes a twelve-month period. The purpose of Congress was to benefit the serviceman's estate. The decedent himself had already paid the "full measure of devotion" to his Country. The construction urged by the Government would limit relief for the estate of this decedent to the first 7 days of the calendar year. The intention of Congress was to grant relief for the decedent's normal taxable year (the calendar year 1945).

The Government urges that the words "taxable year" mean the fractional part of the year ending with the date of the serviceman's death. The Government relies on a definition of "taxable year" used in connection with the filing of income tax returns. This technical argument should be rejected on the grounds (1) that Congress could not have intended to incorporate a procedural definition of "taxable year" in a provision which forgives the tax and eliminates all need of collection procedures and (2) that Congress has, in all non-procedural situations, used the expression "taxable *period*" where it intended substantive tax consequences applying to fractional parts of a year. Indeed, if the Government is correct (and this, of course, is not conceded) in its contention that the words "taxable year" describes the fractional part of a year ending on the date of death, then the decedent's income tax for the period January 1, 1945 to January 7, 1945 is forgiven by the language "prior taxable years (ending on or after

December 7, 1941)," and the estate's income tax for the period January 7, 1945 to December 31, 1945 is forgiven by the words "the taxable year in which falls the date of his death." This result is identical to that achieved by the lower courts' non-technical interpretation of the statute.

Finally, the Government's emphasis on the use of the word "individual" in the statute is completely unwarranted. The word appears in a lengthy clause describing the event and the circumstances upon which the forgiveness depends. As such, it provides no measure of the tax relief intended by Congress. Here again, the Government's technical argument ignores the basic fact that it is the *estate* (the collective word for the serviceman's wife, children, parents, next-of-kin) which is the intended beneficiary of the forgiveness. Indeed, even at the technical level of the Government's argument, the income tax, by the very operation of Section 161 of the Internal Revenue Code, applies to both estates and individuals. The single case relied on by the Government is readily distinguishable from the case at bar.

ARGUMENT

Section 421 of the Internal Revenue Code of 1939 requires that the estate of this deceased serviceman be relieved from income tax for the full year during which he dies.

Section 421 of the Internal Revenue Code of 1939, as it read during the period involved in this case, provided:

> In the case of any individual who dies on or after December 7, 1941, while in active service as a mem-

ber of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—

(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces * * *.[1]

The opinions of the courts below and the opinion of Judge Davis in *Allen* v. *Bickerstaff*, 102 F. Supp. 840 (D. C. M. D. Ga. 1952) ably state most of the arguments bearing on the intention of Congress to relieve the estates of deceased servicemen from income tax for the entire year of death.

A. The purpose of Section 421 and the legislative history accord with the literal language of the statute granting tax relief to the estate of a deceased serviceman for the normal taxable year in which he dies.

The literal language of Section 421 requires that "the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of (the serviceman's) death." The Government concedes, perhaps in deference to the considered views of the courts below, that the phrase "the taxable year in which falls the date of his death" literally describes a period extending beyond the date of the serviceman's death. Obviously if the literal language of the statute conforms to the purpose of the tax relief accorded by Congress, then such relief enures to the

[1] The quoted Section 421, which applies here, was added to the Internal Revenue Code of 1939 by Section 8 of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126.

benefit of the estate of the deceased serviceman for a period after the date of death of the serviceman. The courts below have concluded that both the language and the Congressional purpose completely coincide; that the estate of the deceased serviceman is relieved from income tax for that portion of the twelve month period remaining after the date of the serviceman's death.

The Government, notwithstanding the foregoing concession, contends that only the income of the deceased serviceman up to the date of his death is exempt and that income earned by his estate in the balance of the year of death is fully taxable to his estate. The Government advances arguments in support of that contention which are mainly technical ones. These arguments are based on the unwarranted assumption that this war-time, temporary legislation must fit four-square into the procedural framework of an Internal Revenue Code. These technical arguments will be considered by taxpayer hereinafter.

The basic issue here is the measure of tax relief *intended* by Congress. The Courts below concluded, and the taxpayer here urges, that the purpose of Section 421 was to grant tax relief to the *estate* of the deceased serviceman. The serviceman had paid "the full measure of devotion" to his Government on the date of his death. He could no longer be the intended beneficiary of Congressional bounty. The forgiveness was intended to benefit his survivors—his wife, his children, his parents, his next of kin—all of which the law collectively, albeit impersonally, describes as his estate. It is clear from the legislative history of this and related tax relief provisions that the forgiveness applies to the liability of his estate, the only possible object of the

forgiveness, and that the language of the statute necessarily applies to income earned during the full taxable year in which falls the date of the serviceman's death.

The *measure* of the tax relief intended by Congress must be found in the language dealing with the taxable years to which the tax shall not apply. For reasons which we shall more fully state hereinafter, the fact that Section 421 describes the type of decedent whose estate is granted a tax forgiveness (i.e. "any individual who dies on or after December 7, 1941, while in active service") is completely irrelevant in determining the measure of the tax relief. The tax forgiven is "the tax imposed by this chapter" (the income tax) which applies to *both* estates and individuals. (Section 161 of the Internal Revenue Code of 1939.) The measure of the tax relief must therefore turn on the phrase "the taxable year in which falls the date of his death." The description of the decedent provides absolutely no basis for limiting the forgiveness *to the portion of the taxable year ending with the date of the serviceman's death.* Indeed, as was pointed out by the court below (R. 16) the italicized language could readily have been used by Congress if it had intended to effect such a result. Congress simply did not employ those words in the statute itself. It is even more significant that, in all the Committee Reports dealing directly with Section 421, Congress never once indicated that its intention was to limit relief to *the portion* of the taxable year *ending with* the date of the serviceman's death.[2] Nor do any of the Committee Reports

[2] See H. Rep. No. 401, 78th Cong., 1st Sess., pp. 21 and 41 (1943 Cum. Bull. 1283 at pp. 1299 and 1314); Sen. Rep. No. 221, 78th Cong., 1st Sess., p. 48 (1943 Cum. Bull. 1314, 1349); H. Conf. Rep. No. 510, 78th Cong., 1st Sess. pp. 68, 69 (1943 Cum. Bull. 1351 at pp. 1381-1382).

dealing with subsequent, but similar, legislation give the slightest indication of Congressional intent to so restrict the relief accorded to the serviceman's estate. On the contrary, the evidence of subsequent legislation and pertinent Committee Reports is all the other way.

In 1947, Section 421 was amended in details not pertinent to the issue herein.[3] However, the Committee Reports underlying the 1947 amendment described the import of the original Section 421 in the following language:

> "The purpose of the bill is to correct, retroactively, an inequitable situation which arises under the income-tax laws upon the death of a member of the armed forces. Under existing law if an individual, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations, dies on or after December 7, 1941, and prior to the termination of the present war (as proclaimed by the President) *no income tax is imposed for the taxable year in which he dies.* * * *" (emphasis supplied) (H. Rep. No. 1106, 80th Cong., 1st Sess., pp. 1-2; S. Rep. No. 711, 80th Cong., 1st Sess., pp. 1-2)

The italicized portion of the above-quoted language is ample evidence of Congressional intent to forgive the tax for the full year during which the serviceman dies. And this intention is further manifested in Committee Reports dealing with subsequent, but related, legislation.

Section 421 was temporary legislation, which was not intended to and never did become a permanent part of the

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[3] Section 421 was amended by Section 1 of the Act of August 5, 1947, c. 496, 61 Stat. 778.

Internal Revenue Code. It expired by its own terms on December 31, 1947. After that date, other provisions were incorporated in the Internal Revenue Code of 1939 as Section 421, but those provisions were concerned with completely unrelated matters. However, in 1951, Congress enacted Section 154 of the Internal Revenue Code of 1939 designed to provide tax relief for the estates of servicemen killed in the Korean War.[4] The provisions of Section 154 were similar to those of Section 421 and also forgave the tax for "the taxable year in which falls the date of his death." The Senate report on the bill which added Section 154 used this language in describing the intended forgiveness:

> "*Your committee's bill provides for the forgiving of income tax in the year of death of such individuals* and in prior taxable years ending after the commencement of hostilities in Korea. Also, such individuals are relieved of any income taxes for any year unpaid at the date of their death." (emphasis supplied) (S. Rep. No. 781, 82nd Cong., 1st Sess., Sept. 18, 1951, 1951-2 Cum. Bull. 458, 495)

Just as in the case of Section 421, the 1951 legislation was also temporary in nature. It was to expire on January 1, 1954. In 1953, Congress amended Section 154 (the Korean war tax relief) to extend its benefits for an additional year.[5] The pertinent Report of the House Ways and Means Committee is further evidence of a Congres-

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[4] Section 154 of the Internal Revenue Code of 1939 was added by Section 334 of the Revenue Act of 1951, c. 521, 65 Stat. 452 (26 U. S. C. 1952 ed., Sec. 154).

[5] Section 104 of the Technical Changes Act of 1953, c. 512, 67 Stat. 452 (26 U. S. C. 1952 ed., Sec. 154).

sional purpose to forgive the tax for "the taxable year in which he dies." Thus, the Report states:

> "Section 154 of the code now provides that in the case of an individual who dies after June 24, 1950, and prior to January 1, 1954, while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under sec. 22(b) (13) of the Code) or as a result of wounds, disease, or injury incurred while so serving, (1) the income tax imposed by chapter 1 of the Code shall not apply with respect to the taxable year *in which he dies* or with respect to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950," * * * (emphasis supplied). (H. Rep. No. 894, 83rd Cong., 1st Sess., 1953-2 Cum. Bull. 508, 516)

The foregoing language of the Committee Report supports the conclusion of the courts below. The phrase "the taxable year in which falls the date of his death" completely negates any construction that the date of death itself was to delimit the period to which the forgiveness applies. As pointed out by the court below, "since §421 clearly does not equate the *beginning* date of forgiveness with commencement of a deceased soldier's service, it seems unlikely that such an equation was intended with respect to its *ending* date by death." Indeed, if Congress had intended to equate the tax relief to the period of military service, language was readily available for it to do so. Section 573 of the Soldiers' and Sailors' Civil Relief Act of 1940[6] required that, under certain circumstances, the collection

[6] C 888, 54 Stat. 1178 (50 U. S. C. A. App. §573).

of a serviceman's income tax "shall be deferred for a period extending not more than six months after the termination of his period of military service." There is not a scintilla of evidence in Section 421, Section 154 (Korean war forgiveness) or in the Committee Reports to indicate a legislative intent to limit the forgiveness "to the period of military service" or "to the portion of the taxable year ending with the date of the serviceman's death." On the contrary, the statutes and the Committee Reports all combine to accord relief from tax for the full year in which falls the date of death.

B. The phrase "the taxable year in which falls the date of his death" does not refer to the portion of the serviceman's taxable year ending with the date of his death.

1. ***The "taxable year" to which the statute refers should not be interpreted in the context of other provisions of the Internal Revenue Code related to the technical requirements of filing returns.***

It was clear to the courts below that the literal language of the statute and the non-technical presentations of the intended tax relief as contained in the Committee Reports were ample evidence of a Congressional purpose to preclude the imposition of an income tax for the full twelve month period in which falls the date of the serviceman's death.

The Government rejects the views of the courts below for the alleged reasons, asserted in its brief, that they do violence to the "well-worked technical meanings" of other provisions of the Code. And therein lies one of the fallacies of the Government's position. Section 421 was not a measure designed to control the tax incidence of some day-to-day business transactions where the legislation is drafted with

special attention to the pre-existing technical meaning of the words employed. Rather it was temporary, war-time legislation designed to benefit a small, but highly deserving segment of the population, the next of kin of a deceased serviceman. Without recourse to authority (and none seems needed) common sense would seem to reject the Government's effort to glean the Congressional purpose underlying Section 421 by reference to pre-existing "technical meanings" of statutory clauses. Such an approach is completely arbitrary and totally unrevealing of the intention of the legislators. Relying on these "technical meanings," the Government is seeking to restrict the modest award which a grateful Congress bestowed upon the survivors of a deceased serviceman, all of which had given to their country in a measure beyond the capacity of Congress to repay.

The Government relies on a definition of the words "taxable year" as contained in Section 47(g) and 48 of the Internal Revenue Code of 1939. These sections deal with the requirements of filing an income tax return. They provide that an income tax return "shall be made for the fractional part of the year during which the taxpayer was in existence" and that where such a return is made "taxable year" means such fractional part of the year. But it is inconceivable that Congress could have intended to import the definitions of Section 47(g) and 48 into the language of Section 421 for at least two reasons.

Firstly, Congress intended to grant broad *relief* from tax and did not intend to gear that relief to administrative provisions dealing with the *collection* of the tax. It seems most unlikely that Congress could have intended to incor-

porate a definition of "taxable year" applicable to requirements of filing returns in a provision which, by its very purpose, dispenses with the need of filing a return.

Secondly, as the Government concedes in its brief (pp. 21, 22), in all matters of substance Congress has always used the expression "the taxable *period* in which falls the date of death" where it sought to limit substantive *tax consequences* to the fractional part of the year prior to decedent's death. It did not rely on a pre-existing definition of "taxable year" which relates to the procedural requirements of filing a return. Thus, Sections 42(a), 43, and 126 (and the language quoted therefrom by the Government on pages 21 and 22 of its brief) are all authority for the taxpayer's argument that if Congress had intended to limit relief to a fractional part of the decedent's taxable year then "well-worked technical" language was readily available for it to do so. In those substantive sections, Congressional language and intention coincide to describe a "taxable *period*" which is less than a year. It is illogical to urge that Congress intended a technical interpretation of Section 421 and to contend, at the same time, that Congress would have used the expression "taxable year" if it had desired to limit tax relief to the "taxable period" ending with decedent's death.

2. *Even if the taxpayer concedes that the expression "taxable year" may describe a period of less than twelve months, the relief afforded by Section 421 is not restricted to the portion of the taxable year ending with the date of the serviceman's death.*

It is obvious from the tenor of the Government's brief, that it would have this Court re-mold Section 421 to effect a symmetry which the Government apparently believes

would serve the end of procedural convenience. Thus, it adopts the aforesaid technical interpretation of the words "taxable year" and it alleges that the conclusion of the courts below will present insuperable problems of administration. At page 20 of its brief, it is stated:

> "On the other hand, the alternative adopted by the court below not only adds immediately to what Congress wrote, but raises unanswered questions which may require still further alteration. To illustrate, the court concludes that the estate must be exempted from the income tax for the remainder of the calendar year which would have been part of the deceased serviceman's 'taxable year' had he lived. But not only is this period not the taxable year of the decedent; it may not be the taxable year of the estate either. As we have noted, the estate may return its taxes on the basis of a fiscal year. If so, is the estate's income exempt only until the end of the calendar year, though this does not cover a 'taxable year' of the estate at all? Or is it exempt for its full fiscal year, though this extends beyond what would have been the decedent's taxable year? The statute, referring only to the 'taxable year,' affords no answer to these questions."

It is extremely doubtful whether it is the function of the courts to restrict the generosity of Congress merely because it serves the end of alleged procedural convenience. Nor has the Government satisfied the courts below that their conclusion will impose any real administrative inconvenience if income is exempted for the full normal taxable year of the deceased serviceman. Furthermore, as the Government concedes, the so-called "unanswered questions", if they exist at all, could be (or perhaps should be) answered by further legislation.

Be that as it may, the Government has absolutely failed to demonstrate that Section 421 does not by its own terms contain all the answers to the questions which it puts to this Court. To demonstrate their failure, we will assume, without conceding, that the Government is justified in placing reliance on Section 48 (defining "taxable year" for the purpose of filing returns). Let us further assume, as Appellant's Brief, p. 19 does, that there are two so-called "taxable years"; the decedent's taxable period, "measured by the portion of the calendar year ending with his death", and his estate's taxable period, "*beginning with the date of his death* and extending to either (1) the end of the calendar year or (2) the end of any month other than December if the estate is administered on a fiscal year basis."(Quotations from Appellant's Brief, p. 19.) Let us now assume that a calendar year serviceman was killed at Pearl Harbor on December 7, 1941. His "taxable year", on the foregoing assumption, is January 1, 1941 to December 7, 1941. Let us further assume that his estate adopts a fiscal year ending June 30th. Its first so-called "taxable year" then is for the period December 7, 1941 to June 30, 1942. With these assumed facts, and continuing the assumption of the propriety of the Government's definition of the words "taxable year", let us return to the language of Section 421, which provides that where a serviceman dies on or after December 7, 1941:

> "(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (*ending on* or after *December 7, 1941*) during any part of which he was a member of such forces * * *." (emphasis supplied)

It is obvious from the foregoing statute that the tax for the individual's taxable period (assumed to be January 1, 1941 to December 7, 1941) is abated by the language "with respect to any *prior* taxable years (*ending on* * * * December 7, 1941)". Indeed, that language *must* relate to the serviceman's prior-to-death period because, under the Government's theory, a "taxable year" could only end "on * * * December 7, 1941" if the serviceman died on that date. Thus, "the taxable year *in which falls* the date of his death" must necessarily relate to a period other than the prior-to-death period. It must refer to the estate's first so-called "taxable year", the period December 7, 1941 to June 30, 1942. That conclusion is also dictated by the fact that the statute speaks of the period January 1, 1941 to December 7, 1941 as being "*prior*" to "the taxable year in which falls the date of his death". In the foregoing hypothetical case, it is clear that, if the Government is correct as to its definition of "taxable year", the statute requires that the tax be forgiven for the period January 1, 1941 to December 7, 1941 *and* for the period December 7, 1941 to June 30, 1942. So also, in the case at bar, if the Government's definition of "taxable year" is controlling then the tax is forgiven for the period January 1, 1945 to January 7, 1945 *and* for the period January 7, 1945 to December 31, 1945. The latter result is identical to the result reached in the courts below where the clause "the taxable year in which falls the date of his death" was said to grant forgiveness for the decedent's normal taxable year, in this case the calendar year 1945.

Thus, whether this Court accepts or rejects the importation of a technical definition of the words "taxable year",

the result achieved by the courts below should be upheld. If this Court shares the Government's view that Section 421 should be interpreted with a view to procedural symmetry, then "the taxable year in which falls the date of his death" must, by the very terms of the statute, relate to the estate's so-called "taxable year" beginning on the date of the serviceman's death and ending on the last date of any month elected by his estate (the total period not to exceed twelve months).[7] Consequently, the Government's contention that the use of the word "individual" in Section 421 restricts the relief to the individual's prior-to-death period is necessarily wrong.

The technical emphasis on the use of the word "individual" in Section 421 is another example of the Government's refusal to acknowledge the basic fact that Congress was granting tax relief to an estate. Here again, the taxpayer contends that, either on the broad ground of Congressional purpose or at the technical level of the Government's contextual arguments, the Government's effort to restrict the tax relief to the "individual", and not to his estate, should fail.

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[7] It is noteworthy that Section 692 of the Internal Revenue Code of 1954, the present day counterpart of Section 421, is part of a subchapter dealing with the income tax liability of *estates*.

C. The use of the word "individual" does not restrict the forgiveness to that portion of the serviceman's taxable year ending with the date of his death.

Despite the obvious purpose of Congress to grant tax relief to the estate of a deceased serviceman, the Government insists that Section 421 cannot apply to the estate. The Government relies on the language of Section 421 which states at the outset: "In the case of any individual who dies * * * while in the active service". But their argument ignores the fact that the statute states that "the tax imposed by this chapter shall not apply"; that the latter language refers to the income tax levied by Chapter 1 of the Internal Revenue Code of 1939, and that Chapter 1 imposes the tax on *both* individuals and their estates. Section 161 of the Internal Revenue Code of 1939 provides:

> "(a) Application of Tax.—The taxes imposed by this chapter * * * upon individuals shall apply to the income of estates * * *"

Since the tax applies to *both* the individual and to his estate, the Government's argument is based on a completely unwarranted emphasis on the word "individual". The courts below concluded, and the taxpayer here contends, that the clause "In the case of any individual who dies on or after December 7, 1941 while in active service" was intended to describe the decedent whose estate is granted tax relief. As a result, neither the clause itself nor the word "individual" can give any indication of the measure of the intended tax exemption. Consequently, the courts below properly determined the measure of tax relief by reference to the period during which the tax was not to apply.

It is clear from the Committee Reports that the clause upon which the Government here relies was intended to be and is merely descriptive of the event upon which forgiveness depends. Thus, the Committee Reports relative to the 1947 amendment to Section 421 recites in part:

> "Your committee believes the income tax should not be imposed *in the event of the death* prior to January 1, 1948, of an individual while serving as a member of the armed forces * * *" (emphasis supplied) (H. Rep. No. 1006 80th Cong., 1st Sess., pp. 1-2; S. Rep. No. 711, 80th Cong., 1st Sess., pp. 1-2).

So also the Committee Reports which accompanied Section 154 (Korean war forgiveness) stated:

> "Such Section 154 provides that, *where* any individual dies after June 24, 1951 and prior to January 1, 1954, while in the active service as a member of the Armed Forces of the United States, if his death occurred while serving in a combat zone * * * or at any place as a result of wounds, disease, or injury incurred while so serving, (1) the tax imposed by Chapter 1 of the Code will not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year which ended on or after the first day he was so serving in a combat zone * * *" (emphasis supplied) (S. Rep. No. 781 82nd Cong., 1st Sess., 1951-2 Cum. Bull. 458, 580; H. Rep. No. 1213 (Conference Report); 82nd Cong., 1st Sess. (1951-2 Cum. Bull. 622, 632)

Section 154 also began with the language "In the case of any individual who dies" and it is quite apparent from the foregoing Committee Report that the reference to "any

individual" was merely a necessary element in describing the event and the circumstances upon which the forgiveness depended. Indeed, if Congress had used the word "soldier" it would have failed to include sailors. If it had used "serviceman" it would have failed to include servicewomen. The simple fact is that any such relief provision, of necessity, must contain the word "individual."

The Government contends that the expression "in the case of an individual" are words-of-art in the tax law which, when employed by Congress, can only relate to the individual's income tax liability. The random instances cited by the Government (Brief p. 13) for that proposition are, on close inspection, convincing authority for the opposite conclusion. Thus, the provisions dealing with the deductibility of non-business expenses [Section 23 (a) (2)] or of certain losses [Section 23(e)] start with the preamble "in the case of an individual." But both of those sections apply to estates as well as individuals since Section 162 of the Code provides that the net income of an estate "shall be computed in the same manner and on the same basis as in the case of an individual."

Finally, the Government relies on *Lloyd* v. *Delaney*, 86 F. Supp. 1001 affirmed 181 F. 2d 941. The facts of that case presented an issue which is completely distinguishable from the issue involved herein. There a trust had been created by the will of the serviceman's father. Under the trust the serviceman was entitled to income up to $1200 a year. The balance of the income (which was quite substantial) was to be accumulated, was to be added to the principal, and was to be paid to someone else in the event of the serviceman's death. The trustees claimed exemption

for the entire income under Section 421. The District Court, concluding that Congress did not intend to exempt the trust, said in part:

> "This construction of the statute accords with its purpose of giving *a benefit to the estate of a deceased serviceman.* A construction which included fiduciary taxes would often work capriciously and extend benefits to persons who could not conceivably have been intended to be the object of the bounty of the Congress *or of the serviceman.* This can be seen by varying slightly the facts in the case at bar. Suppose the testator had named as the remainderman who would take in the event of Demarest Jr.'s premature death the testator's friend. Surely to grant a tax rebate to trustees for the benefit of such a friend not of the soldier, but of his father would serve no rational purpose that could have the recommended itself to Congress." (emphasis supplied)

As the court below observed (R. 18), the *Delaney* case is not at all apposite for reasons stated in its opinion.

In summary (1) the introductory language of Section 421 is descriptive of the decedent whose estate is entitled to the forgiveness; (2) the very purpose of the legislation was to benefit the estate of the deceased serviceman; (3) the use of the word "individual" can be of no significance since the income tax applies both to the "individual" and his "estate". Thus, it is submitted that the courts below properly concluded that the measure of tax relief must be determined with reference to the period relative to which the forgiveness applies. And, as we have already seen, the tax forgiven in the case at bar is for the calendar year 1945.

In its final point, the Government contends that "odd results" would follow if the courts below are upheld. In effect, the Government would deny the exemption to this taxpayer merely because, in its opinion, the Congress neglected to be generous to a few taxpayers who may be deserving of Congressional bounty. It would be a strange perversion of Congressional generosity if this estate were denied the exemption merely because a harrassed Congress forgot to be generous in the isolated situations posed in the Government's brief. It would be even stranger if this estate were denied exemption merely because the Government *assumes* that Congress forgot to be generous in these situations. It is hardly incumbent on the taxpayer to demonstrate the invalidity of the Government's assumption. If these other taxpayers should seek the benefits of Section 421, on kindred legislation, it is not unlikely that they will find a sympathetic court. A statute in which Congress has declared its purpose to reward the next-of-kin of a man who had given his life in the service of his country should be liberally construed. See *Clark* v. *Mechanic's American National Bank*, 282 Fed. 589. Be that as it may, Sergeant Lupia was killed in action on Leyte Island on January 7, 1945. His estate is expressly within the language and the intendment of the statute. No further justification is or should be required of this taxpayer.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be affirmed.

LEON LONDON
LLOYD GEORGE SOLL

March 1, 1955.

No. 368. MARCELLE *v.* ESTATE OF LUPIA ET AL. Certiorari, 348 U. S. 882, to the United States Court of Appeals for the Second Circuit. Argued March 4, 1955. Decided March 7, 1955. *Per Curiam:* We reject the construction placed upon the statute by the Fifth Circuit and approve the construction placed thereon by the Second Circuit, whose judgment is affirmed. *Lee A. Jackson*

argued the cause for petitioner. With him on the brief were *Solicitor General Sobeloff, Assistant Attorney General Holland, Marvin E. Frankel, Ellis N. Slack* and *Walter Akerman, Jr. Leon London* filed a brief for respondents. Reported below: 214 F. 2d 942.